

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

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COMMONWEALTH OF MASSACHUSETTS,

v.

KAREN READ.

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* Docket No. 2282CR00117

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BEFORE THE HONORABLE BEVERLY CANNONE
VOIR DIRE EXAMINATION
JUNE 18, 2024

APPEARANCES:

For the Commonwealth:

BY: ADAM LALLY, A.D.A.
LAURA MCLAUGHLIN, A.D.A.

For the defendant:

BY: DAVID YANNETTI, ESQ.
ALAN JACKSON, ESQ.
ELIZABETH LITTLE, ESQ.

Dedham, Massachusetts
Room 25

Christine D. Blankenship, CVR
Court Reporter/Transcriber

I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
Marie Russell				
(By Mr. Jackson)	13			
(By Mr. Lally)		40		
Daniel Wolfe				
(By Mr. Jackson)	64			
(By Mr. Lally)		77		
Andrew Rentschler				
(By Mr. Jackson)	83			
(By Mr. Lally)		100		
Voir Dire Exhibits:				
1	Photograph			
2	Photograph			
3	Photograph			
4	List			

1 (Court in session.)

2 (Defendant is present with counsel.)

3 THE COURT OFFICER: You may be seated. Court's now
4 in session.

5 THE CLERK: 22-117, the Commonwealth versus Karen
6 Read.

7 THE COURT: All right. Good morning, Counsel, Ms.
8 Read.

9 Are all of the witnesses here, Mr. Jackson?

10 THE COURT: I'd like to hear from Dr Russell first.
11 Are you both prepared to --

12 MR. JACKSON: Your Honor, I'm so sorry. I could
13 not hear you.

14 THE COURT: I would like to hear from Dr. Russell
15 first. Is that her name?

16 MR. JACKSON: Dr. Russell, yes. The order would be,
17 I would propose, based on scheduling, Dr. Russell, Dr.
18 Wolfe, Dr. Rentschler.

19 THE COURT: Okay, then that's good, because that's
20 the order that I prefer, so. All right. Do you have a
21 CV for her? Good morning. Good morning, Troy. Do you
22 have a CV I could look at for her, please?

23 MR. JACKSON: Let me see if I have it in my
24 notebook. I thought I had it. Yes, I do.

25 THE COURT: And she has not written a report?

1 MR. JACKSON: She's not.

2 THE COURT: All right. Let's bring her in, please.

3 MR. JACKSON: Your Honor, before we get started,
4 can I get an understanding? We started to say that at
5 sidebar the other day, and you said you wanted to put
6 that off to get to the witnesses. But I need a little
7 bit of an understanding of what the Court's
8 expectations are.

9 My understanding of the voir dire, which this seems
10 to be unusual in terms of the timing of it --

11 THE COURT: So the understanding of the voir dire
12 is this is for the Commonwealth's motion to exclude
13 this testimony. All right. That's what we're here for,
14 the Rule 14 violation.

15 MR. JACKSON: Is that the same with Dr. Wolfe and
16 Dr. Rentschler?

17 THE COURT: Well, I thought that would help both of
18 you. The Commonwealth has nothing on that, and you say
19 you haven't been able to even talk to them at all about
20 this case.

21 MR. JACKSON: That's correct.

22 THE COURT: So I want to find out if they have any
23 credible, competent evidence to put forward. So we'll
24 have a voir dire on them as well. But for Dr. Russell,
25 what we're doing here today is there's an alleged --

1 well, let's just -- there appears to me to be a
2 violation of the reciprocal discovery obligations of
3 defense counsel regarding Dr. Russell. So let's hear
4 from her today to see what the appropriate remedy is
5 for this violation.

6 MR. JACKSON: So my intention is to ask her the --
7 so I have -- the Court understands my sort of
8 guardrails. My intention is to ask her what her
9 qualifications are, which is the -- that's the basis
10 for a voir dire, and that's where I'm going to stop.
11 I'm not intending to ask her what her opinions are, her
12 conclusions. I'm going to ask her if she's come to
13 opinions and conclusions, but I don't want to have to
14 examine her concerning her full opinions, her full
15 conclusions, what she's -- what she's based those
16 conclusions on. That's unfair. We've provided the
17 defense everything that we -- I'm sorry -- the
18 prosecution everything that we need to provide to them
19 in terms of disclosure. They've got the equivalent of a
20 report. They've got a summary of what she's going to
21 testify.

22 THE COURT: When was that provided? My order was
23 one week from the start of trial, right?

24 MR. JACKSON: Well, we didn't -- Your Honor, in
25 fairness, they didn't even finish their discovery one

1 week before the start of trial. So it's a little unfair
2 for us to be put on the seat --

3 THE COURT: One week from the filing of the
4 certificate of compliance.

5 MR. JACKSON: Well, there -- I don't know when
6 there's -- I can't remember off the top -- my co-
7 counsel indicates it was the day before trial.

8 THE COURT: Okay.

9 MR. JACKSON: So during the course of -- the trial
10 is a dynamic thing. During the course of the trial, I
11 did not know who Dr. Marie Russell was at the time that
12 they filed their certificate of compliance. We then
13 attempted to, and did, give them the reciprocal
14 discovery that we were obligated to do after they filed
15 their certificate of compliance.

16 THE COURT: When?

17 MR. JACKSON: Within three days of that. We had
18 been giving them information prior to that, but at
19 least within three days of that. We've continued, so
20 the record is clear, we've continued to get additional
21 discovery from the Commonwealth and notices of
22 discovery throughout the trial. They have not
23 finished. In fact, during the trial, they interviewed
24 Jen McCabe, apparently, had a full interview with her.
25 Lieutenant Tully took a report, dated the report, and

1 then they held on to that report until after she
2 testified. The interview, the report, and the
3 completion of the report were all done before her
4 testimony.

5 THE COURT: Do you need -- do you need to call her
6 again?

7 MR. JACKSON: No, Your Honor. I'm not -- that's
8 not my -- and I think the Court understands. That's
9 not my point. My point is not I need to call Jennifer
10 McCabe back. I've done the damage that needs to be done
11 on Jennifer McCabe. The point is --

12 THE COURT: I'm sorry. I missed that. You've what?

13 MR. JACKSON: I've done the damage that needed to
14 be done on Jennifer McCabe. I don't need to call her
15 back.

16 The point is that what's good for the goose is good
17 for the gander. The Commonwealth doesn't have --
18 doesn't get to stand in the position of piecemealing
19 and feeding us information reports, discovery,
20 throughout the course of the trial. And by the way,
21 when we then got central -- seminal information about
22 an expert that we did not know about, never met, never
23 heard of, within three days of that, we provide
24 everything that we have about that witness to the
25 Commonwealth. They can't then turn around and say, oh,

1 well, it's all the defense's fault. So we want to have
2 a voir dire. Which means that the euphemism for that
3 voir dire is, we want to have two shots at the -- two
4 bites of the apple. We want to be able to completely
5 cross-examine her, then go back to our experts, and if
6 she testifies, cross-examine her again after consulting
7 with our expert. That's two bites of the apple, and
8 that's not fair.

9 If the Court wants to hear whether or not Dr. Marie
10 Russell is qualified to testify about the arm injuries,
11 that I believe is the parameters, the proper
12 parameters, of the voir dire, and that's what I'm
13 prepared to do today. But I wasn't planning on getting
14 into the substance of her testimony, because that's
15 been provided. And I don't think Mr. Lally should be
16 able to get into the substance of her testimony,
17 because he knows what her - the substance is, because,
18 like I said, that's been provided.

19 THE COURT: All right. So I disagree. I'm going to
20 hear from the Commonwealth on this. Is it Ms.
21 McLaughlin or Mr. Lally?

22 MR. LALLY: Your Honor, just briefly in regard to
23 what counsel was referencing with Ms. McCabe. It was
24 not a full interview by Lieutenant Tully. It was a --
25 and I can give, I don't have it on me at this moment,

1 but I can give the Court a copy of that report. But
2 essentially, it was Miss McCabe met with Lieutenant
3 Tully, looked at some video, and was asked a single
4 question.

5 That report wasn't available. I didn't have it
6 until after Ms. McCabe testified, but it was given to
7 counsel prior to Lieutenant Tully testifying, and there
8 were no questions asked of Lieutenant Tully in regard
9 to that.

10 The -- my issue, and you know, I wasn't asking for
11 a voir dire as it proposed to -- as it relates to Dr.
12 Russell, is that we first heard of Dr. Russell on May
13 21, which was, I think, six weeks into trial.

14 THE COURT: All right. So that's what I asked, and
15 you told me it was three days after the beginning of
16 trial, Mr. Jackson.

17 MR. JACKSON: Your Honor, I said at this at sidebar
18 the other day, and I just said it again today. I let
19 the Commonwealth and the Court know about Dr. Marie
20 Russell three days after I learned about her, which was
21 the 17th of May. I had never -- I think it was the
22 17th of May. I had never heard of her. I didn't know
23 who she was. We made contact. I determined that she
24 would be useful for the jury in terms of the,
25 specifically, the injuries to John O'Keefe's arm. I

1 didn't have one conversation with her, then
2 immediately, within three days of that, turned that
3 information over to the -- to the prosecution. So I
4 didn't say that I gave this over three days of the
5 trial. That's not what I said.

6 THE COURT: All right. But you were ordered to do
7 it -- Mr. Yanetti, what was the date? What -- you had
8 one week from when?

9 MR. YANETTI: The day before trial. So it would
10 have been, I believe, April 15. So what we knew as of
11 that date, we were required to turn over.

12 THE COURT: All right. I need to take a quick
13 recess.

14 (Court in recess.)

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18 (Court in session.)

19 (Defendant is present with counsel.)

20 THE COURT OFFICER: Please be seated. Court is
21 back in session.

22 THE COURT: All right. So the Commonwealth has
23 moved that I exclude the testimony of Dr. Russell,
24 based on a violation of the reciprocal discovery
25 obligations of the defense.

1 So I do find that there is a violation of the
2 reciprocal discovery obligations of Rule 14.

3 And I'm quoting from the notes the importance of
4 this, the reporter's notes to the old rule, and as you
5 all know, we're in the process of updating that rule,
6 "But the very integrity of the judicial system and
7 public confidence in the system depend on full
8 disclosure of all the facts within the framework of the
9 rules of evidence. To ensure that justice is done, it
10 is imperative to the function of courts that compulsory
11 process be available for the production of evidence
12 needed either by the prosecution or the defense."

13 So what we're here to do today is decide a remedy
14 for this violation, and that's why we're having a voir
15 dire. I am not prohibiting the Commonwealth from
16 anything on their examination of witness, Mr. Jackson.
17 The alternative is she doesn't testify. So the
18 Commonwealth has not received the appropriate discovery
19 from this witness. So we're going to have a voir dire,
20 and they can ask her anything that they think they need
21 to ask her. So those are the parameters of this
22 morning.

23 MR. JACKSON: As long as I know the guardrails,
24 that's -- that's fine. I just to close the loop on the
25 record, my understanding, and Ms. Little can probably

1 speak to this more intelligently than I can, but during
2 the middle of trial, there was a witness that we had
3 never heard of. We did not know and didn't have a
4 report for.

5 THE COURT: Who is that?

6 MR. JACKSON: Dr. Faller, F-A-L-L-E-R.

7 THE COURT: Okay.

8 MR. JACKSON: If the Court remembers, it's buried
9 in the middle of about 75 witnesses. So he testified to
10 alcohol levels, et cetera, and protocols at the --
11 which institution? At Good Sam, Good Samaritan. We
12 didn't have that information either. We didn't throw a
13 fit. They said we were going to provide this
14 information in a timely fashion. As soon as we know
15 that we're going to call him, he's going to be on our
16 witness list. We didn't know one way or the other what
17 he was going to say. We didn't have a report. And we
18 went out about our business.

19 That's what we were doing as well. And by the way,
20 I would note that the notes and the report under Rule
21 14 required disclosure of information you have. I just
22 don't want the Court to think that we were sitting on
23 information that we didn't turn over.

24 THE COURT: No, I'm not. I'm not saying that. It's
25 just this isn't as if it was something that the

1 Commonwealth brought up and you needed to scramble.
2 This is entirely of the defense position. So --

3 MR. JACKSON: I understand.

4 THE COURT: All right. So that's the big
5 difference. So why don't you go ahead and call her?

6 MR. JACKSON: Okay. May I be excused to call the
7 witness.

8 THE COURT: Yes.

9 MARIE RUSSELL, sworn

10 THE COURT: Good morning.

11 THE WITNESS: Good morning.

12 THE COURT: So I'm going to ask you to keep your
13 voice up. Speak right into that microphone, Doctor,
14 okay?

15 THE WITNESS: Yes.

16 THE COURT: Thank you. All right. Go ahead, Mr.
17 Jackson.

18 MR. JACKSON: Thank you, Your Honor.

19 **DIRECT EXAMINATION**

20 **BY MR. JACKSON:**

21 Q Good morning. Could you please state your name and
22 spell your last name for the record?

23 A Yes. Marie Russell, R-U-S-S-E-L-L.

24 Q And I'm going to echo what the Court just
25 indicated. The air conditioners are on -- on. So

1 please keep your voice as elevated as possible to speak
2 -- maneuver the microphone however you need to, okay?

3 A Okay.

4 Q Dr. Russell, what do you do for a living?

5 A I am a retired emergency physician and forensic
6 pathologist.

7 Q And tell me what education you have going all the
8 way back to the beginning that qualifies you as an
9 emergency physician and former pathologist, before you
10 retired.

11 A Okay. Well, I've had about at least 16 years of
12 formal education beyond high school.

13 Initially, I started at MIT where I did my premed
14 courses. I had always wanted to be a physician, and so
15 -- so I went to MIT for a year, took my took premed
16 courses. And then I had an unusual life event in that
17 my mother came down with cancer and she subsequently
18 passed away.

19 During the time away, I -- so I took some time off
20 from school. During that period of time, I decided to
21 explore another interest of mine, which was law
22 enforcement. And so I took some courses in law
23 enforcement, and I became a full-time police officer
24 here in Massachusetts.

25 Q What years were you at MIT?

1 A That was 1972 to 1974.

2 Q Did you go to the police academy?

3 A I did. When -- once I became a police officer here
4 in Massachusetts, I attended the Boston Police Academy
5 where I graduated.

6 Q What year was that?

7 A That was in 1977.

8 Q During the course of your training as a police
9 officer, did you have any specialized training in hit
10 and run accidents and investigations?

11 A Yes, I did.

12 Q And which agency did you work for as a sworn police
13 officer?

14 A I worked for the city of Malden full-time for seven
15 years.

16 Q That would be from 1977 to 1984, approximately?

17 A Correct.

18 Q During that time, did you continue your education
19 in any way?

20 A I did. So -- okay. I took as many courses as I
21 could from the Massachusetts Criminal Justice Training
22 Council, which included a course, a several day course,
23 in hit-and-run accident investigation. I took courses
24 in forensic photography and numerous other things.

25 And then -- and I also, at the same time, continued

1 to go to college, and I did that part-time where I
2 eventually got a degree in -- a bachelor's degree of
3 Science in psychology with highest honors.

4 Q What institution was that from?

5 A That was from Northeastern University.

6 Q And that was a bachelor of arts in psychology?

7 A I think it was a bachelor of science.

8 Q Got it. Subsequent to your bachelor of science
9 degree from Northeastern, did you also advance your
10 education further, formally?

11 A Subsequent to it? So, yes, so I decided
12 that I did want to pursue a medical career, and so I
13 then attended medical school, University of
14 Massachusetts Medical School full-time for four years.

15 Q Did you ultimately get a degree, an MD degree from
16 UMass?

17 A Yes, a doctor of medicine degree in 1987.

18 Q So you were there from 1983 to 1987; is that right?

19 A That is correct.

20 Q And did you do a residency?

21 A I did. I did two residencies, actually. Most
22 people do one, but I did two. I did -- my first
23 residency was combined internship and residency for
24 four years, and I did that in Los Angeles at Los
25 Angeles County Medical Center, which is a very big

1 trauma center, and what I would consider the Bellevue
2 of the West Coast. Very busy.

3 Q You say that just because the volume at USC Medical
4 Center?

5 A That is correct.

6 Q Is it one of the busiest medical trauma centers in
7 the country?

8 A Yes.

9 Q You were there from 1987 to 1991; is that right?

10 A For -- yes, I was -- yes, I did my ER internship
11 and residency during those years, yes, there.

12 Q During that time were you seeing patients?

13 A Oh, yes.

14 Q You were treating patients?

15 A Lots of them.

16 Q You were attending to -- attending to patients?

17 A I was -- I was a trainee so I was -- I was seeing
18 as many patients as we could. There was always a, you
19 know, a waiting room full of patients. And, yeah, so I
20 saw many, many patients during that time period.

21 Q Did -- you indicated a second residency. Tell me
22 about that.

23 A Okay. So I still realized I had an interest in
24 forensics, and I -- so I decided that I wanted to also
25 train in forensic pathology. So I did a second

1 residency in anatomic pathology two years, followed by
2 forensic pathology fellowship at the Los Angeles County
3 Coroner's Office for two years.

4 Q And the years, if that's four years, that would be
5 from 1991 to 1995, approximately?

6 A That is correct.

7 Q Tell me what your experience was as a fellow at the
8 Los Angeles coroner's office -- Los Angeles County
9 Coroner's Office.

10 A Yes, well, it also was a very busy coroner's
11 office. And so every day there would be cases. I
12 probably did at least two cases a day on most days,
13 and plus conferences and educational opportunities. But
14 the interesting thing about being a fellow is they try
15 to give you a wide assortment of cases. So, for
16 instance, I not only saw numerous victims of gunshot
17 violence and stabbings, but I saw numerous victims of
18 motor vehicle accidents and natural death overdoses.
19 And then if there was an unusual case, it usually went
20 to the fellow, you know, because the fellow was also
21 being supervised, so.

22 Q Did any of those unusual cases -- and we'll get
23 more into this in just a second, but did any of those
24 unusual cases include animal attacks?

25 A Yes.

1 Q Did you become a professor, an educator, at any
2 point?

3 A Yes. So during my 29 years at LA County Hospital,
4 I -- well, during the last 25 of those, I was an
5 assistant professor or an instructor, but mostly an
6 assistant professor. What -- and what that meant is
7 that I was responsible for overseeing the care that was
8 provided by the interns and residents. So when a
9 patient would come into the -- into the hospital, the
10 emergency room, they were oftentimes, usually seen by
11 the intern or resident, and then I would go and
12 subsequently see that patient also. So -- and that was
13 in addition to my own cases. So I'd see my cases and
14 their cases.

15 Q And that was at LA USC, correct?

16 A That is correct. And --

17 Q Can I get a quick question?

18 A Yes.

19 Q LA USC, for those of us who are not necessarily
20 familiar with it, is that associated with the
21 University of Southern California Medical Center?

22 A Yes.

23 Q That's the school in other words?

24 A Yes. So it stands for Los Angeles County/University
25 of Southern California Medical Center.

1 Q And that's where you were an assistant professor
2 for the majority of the rest of your career?

3 A Correct.

4 Q Were you also an assistant or an adjunct professor
5 at Cal State, Los Angeles?

6 A Yes.

7 Q Okay. For how long were you an adjunct professor
8 there?

9 A I believe that was four or five years, and I taught
10 criminalistics, forensic medicine there.

11 Q As an attending physician in the ER, in other
12 words, a supervising physician in ER, can you tell us
13 what some of your duties and responsibilities included,
14 especially as it pertains to trauma, and then I'll get
15 more specific in just a second.

16 A Okay. Well, so I would oversee the care of all the
17 patients that came in during a particular shift, and
18 that would include medical patients and trauma
19 patients. And as I mentioned, it was a very busy trauma
20 center, so we had lots of trauma patients, including
21 the types of violence I described earlier that I saw at
22 the coroner's office, but lots of motor vehicle
23 accident victims because there was a highway there
24 right nearby. There were a couple of highways. And --
25 so, yeah, so a wide variety of accidents.

1 Q Did your supervision include assessing, diagnosing,
2 and treating patients?

3 A Correct.

4 Q In terms of the middle part of that diagnosis, was
5 part of your job to determine the cause of injuries, or
6 to at least assess the cause of injuries?

7 A Yes. And I took that on a little bit more because
8 I was interested in the forensics aspect of the
9 injuries.

10 Q The forensic aspect?

11 A Yes.

12 Q Okay. During your time at LA USC, even after you
13 left the Los Angeles coroner's office as a fellow, did
14 you continue to stay in contact with the coroner's
15 office and have a relationship with the coroner's
16 office as a supervising physician?

17 A I continued to stay in contact with the coroner's
18 office, and I used to attend their conferences as often
19 as I could, not as a supervising physician, but as a
20 physician and a graduate of their program.

21 Q During your tenure at LA USC, did you ever become
22 the director of any programs at LA USC?

23 A Yes.

24 Q Did that include the Director of Center for Life
25 Support Training?

1 A Yes.

2 Q What years was that, if you remember?

3 A I don't remember that --

4 Q Early 2000s, late 90s?

5 A Yes, that sounds about right.

6 Q Okay.

7 A And we would conduct lots of courses, including
8 trauma life support courses.

9 Q Did LA USC incorporate a quality improvement
10 program?

11 A Yes.

12 Q Within their institution?

13 A Yes.

14 Q Did you become a director of that as well?

15 A Yes.

16 Q So you were Director of Center for Life Support
17 Training and director of LA USC Medical Center Quality
18 Improvement; is that right?

19 A The quality improvement was for the emergency
20 department. Yes.

21 Q All right. And did you also become the director for
22 jail medical services?

23 A Yes.

24 Q What is the association between LA USC and the
25 very, very expansive jail system in Los Angeles County?

1 A So LA County Hospital was unique in that they many,
2 many years ago developed a jail -- what they called a
3 jail ward which was a combined inpatient, outpatient
4 and ER. So there was a dedicated jail ER. And that
5 has been in existence for probably about 70 years now.
6 And so patients that were placed under arrest by either
7 LA sheriff, LAPD, California Highway Patrol, or any of
8 the municipal agencies in the area, and I think there
9 were about 70 or more municipal agencies, could bring
10 their patients to the LA County jail ward where they --
11 where the patients would get treatment.

12 Q Ultimately, you became the director of that entire
13 program, correct?

14 A Yes.

15 Q Did you also work with the State Medical Board of
16 California in any capacity?

17 A Yes.

18 Q Tell us about that.

19 A For about seven years, I worked part-time for the
20 California Medical Board as a physician assigned to one
21 of their enforcement teams, and I did that one day a
22 week and I did my other job at the county hospital, the
23 other 40 hours a week.

24 Q So you didn't take off time from your duties as a
25 -- as an ER physician, as an emergency physician, this

1 was in addition to you being an emergency physician?

2 A That is correct.

3 Q Do you hold the title of chief medical executive
4 for the for the California state prison system,
5 specifically at Corcoran?

6 A Yes.

7 Q Tell us about that.

8 A So I retired from LA County Hospital, and I went on
9 to move on to the LA -- excuse me -- the California
10 Department of Corrections and Rehabilitation.

11 Q And what year was that did you do that transition?

12 A So 2018 is when I started for the state prison
13 system.

14 Q Okay.

15 A And I worked there for five years as director of
16 their medical service in Corcoran.

17 Q I'm sorry. So for that prison within that system,
18 you were the chief medical executive for the entire
19 agency, correct?

20 A That is correct.

21 Q All right.

22 A For the entire -- for the entire prison.

23 Q Understood. Are you board certified in emergency
24 medicine?

25 A Yes.

1 Q Are you a member of the National Association of
2 Medical Examiners?

3 A Yes.

4 Q Are you a member of the American Academy of
5 Forensic Science?

6 A Yes.

7 Q Do you have any publications in the area, and I'm
8 going to be very specific, because I've -- you've been
9 relatively widely published; is that right?

10 A Some people would say yes. Some people would say
11 no.

12 Q More than a couple of publications?

13 A Correct.

14 Q And peer reviewed journals, correct?

15 A Yes.

16 Q I want to focus your attention on animal injuries.
17 Have you been published in the area of animal injuries,
18 specifically?

19 A Yes.

20 Q Do you recall those publications?

21 A Yes. They had to do with law enforcement dog
22 bites.

23 Q Did you draft an article or coauthor an article
24 called "Managing Law Enforcement Dog Bites in the ER"?

25 A Yes, I was a coauthor.

1 Q 1996?

2 A Sounds right.

3 Q And that was a peer reviewed article?

4 A Yes.

5 Q Ultimately published?

6 A Yes.

7 Q And ultimately available to be cited by other
8 doctors and studied by other doctors, correct?

9 A Correct.

10 Q Did you also author or coauthor an article
11 entitled, "Law Enforcement, Canine Dog Bites, Injuries,
12 Complications, and Trends"?

13 A Yes, I did.

14 Q Is that in 1997?

15 A Sounds right.

16 Q Was that also peer reviewed?

17 A Yes.

18 Q And that also -- that publication was also
19 available for other physicians throughout California
20 and throughout the country to refer to for the study of
21 animal bites and dog bites, correct?

22 A Dog bites, yes.

23 Q Dog bites. Concerning animal injuries, during the
24 course of your professional experience, how many
25 patients have you seen, diagnosed, and/or treated with

1 animal injuries, including dog bites and scratches, if
2 you had to estimate?

3 A Many hundreds.

4 Q Would you say it's over or under 1,000?

5 A I would say it's over 500. I can't -- I don't know
6 because we didn't keep really good records back in the
7 earlier days.

8 Q But it's safe to say you've seen hundreds and
9 hundreds and hundreds of dog bites and scratches?

10 A Yes, in my 29 years at LA County Hospital, yes.
11 And my dog bites -- I mean dog bites that I took care
12 of and dog bites that the residents took care of, yes.

13 Q And you've even published articles and studied, not
14 just seen them, but studied dog bites and dog wounds,
15 correct?

16 A Yes.

17 Q Have you qualified as an expert previously in other
18 courts as an emergency -- in emergency medicine?

19 A Yes.

20 Q Have you qualified as an expert in other courts in
21 forensic pathology and wounds?

22 A Yes.

23 Q Has that been in both state and federal court?

24 A Yes.

25 Q Doctor, did you -- were you asked to review certain

1 materials related to this case?

2 A Yes.

3 Q And that was in furtherance of coming to, if you
4 could, come to an opinion or a conclusion about
5 injuries to the victim in this case, a person by the
6 name of John O'Keefe?

7 A Yes.

8 Q What did you review in anticipation of your
9 determining whether or not you could come to an opinion
10 or a conclusion?

11 A So I reviewed hospital photographs, autopsy
12 photographs, an autopsy report, grand jury testimony
13 from the medical examiner in this case. There may be
14 some other --

15 Q Based on --

16 THE COURT: I just want to ask about that. Do you
17 have notes with you as to what you reviewed?

18 THE WITNESS: No.

19 THE COURT: Okay. So when you say there may --
20 there might be other, you don't --

21 THE WITNESS: Well, if, yeah, if --

22 THE COURT: If he tells you what you reviewed, you
23 -- you'd know it?

24 THE WITNESS: I would recognize it.

25 THE COURT: All right. But I want to hear it from

1 you. You don't know of anything else that you've
2 reviewed. This is sort of important, Mr. Jackson.

3 THE WITNESS: Okay.

4 THE COURT: Can you think of anything else, Doctor,
5 besides these?

6 THE WITNESS: The autopsy -- autopsy photographs,
7 autopsy report, neuropathology report, toxicology
8 report, and the grand jury testimony.

9 Q Okay. So as you recall, the items that you
10 reviewed include an autopsy report by Dr. Scordi-Bello,
11 correct?

12 A Yes.

13 Q A neuropathology report by a doctor named
14 Stonebridge, correct?

15 A Yes.

16 Q Toxicological reports associated with the autopsy?

17 A Yes.

18 Q Grand jury transcripts from Dr. Scordi-Bello?

19 A Yes.

20 Q Photographs of evidence items including a gray
21 sweatshirt?

22 A Oh, yes, yes.

23 Q And autopsy photos that were taken attended to the
24 actual autopsy?

25 A Yes. And photographs that were taken in the

1 hospital, and I read the hospital ER record, also.

2 Q So in addition to what you've just listed, there's
3 also hospital photos separate and apart from the
4 autopsy photos; is that correct?

5 A Yes.

6 Q And those hospital photos showed the injuries to
7 Mr. O'Keefe's arm; is that right?

8 A Yes.

9 Q And you also reviewed emergency room records that
10 are attended to his initial acceptance into the
11 emergency room on January 29, 2022, correct?

12 A That's correct.

13 Q Based on your review of all of those materials,
14 were you able to confidently come to any conclusions or
15 opinions about the nature of the injuries suffered by
16 John O'Keefe, specifically, as it related to -- as they
17 relate to John O'Keefe's right arm?

18 A Yes.

19 Q What is your opinion and conclusion concerning
20 those injuries?

21 A Those injuries appear to be consistent with an
22 animal attack.

23 Q Can you be more specific in terms of the type of
24 animal, or are you relegated to simply an animal
25 attack?

1 A Well, they are consistent with a large dog attack.
2 They're -- the -- there's combination of both what I
3 consider bite wounds and scratch wounds on the arm.
4 There were also some puncture wounds in that shirt.

5 Q And are the puncture --

6 THE COURT: I'm sorry. Puncture wounds in the
7 shirt?

8 THE WITNESS: Puncture holes in the shirt.

9 THE COURT: Okay.

10 Q And on what do you base the opinion that the
11 injuries are consistent with dog bite or scratch marks?

12 A Well, the patterns. There are several patterns of
13 parallel wounds that appear to be superficial scratches
14 that could have been caused by nails or could have been
15 caused by teeth. That -- they -- there are different
16 angles on the arm and different locations on the arm,
17 and -- but they're generally oriented in a -- in a
18 specific direction. And there's also an area, the
19 distal forearm, which is close to the wrist which shows
20 what I believe is an arch area of teeth marks.

21 Q And what's the significance of the arch area?

22 A Well, so the arch would be the front area of the
23 jaw of the animal, you know, or the dog in this case,
24 where the teeth are tend to be close together and
25 curved. There's a curved pattern to the configuration

1 of the teeth.

2 MR. JACKSON: If I may have just a moment, Your
3 Honor.

4 THE COURT: Yes.

5 Q Doctor, I'm going to show you a series of
6 photographs.

7 MR. JACKSON: May I approach, Your Honor?

8 THE COURT: Yes.

9 Q First, can you describe whether or not you
10 recognize what's depicted in that photograph? Have you
11 seen that photograph before?

12 A Yes, I have.

13 Q Is that part of what you reviewed in coming to your
14 opinions and conclusions?

15 A Yes.

16 Q What is that a photograph of?

17 A So this is a photograph of the decedent's fore --
18 arm, arm near the elbow, and it -- do you want me to
19 describe what it shows?

20 Q Just briefly --

21 A Okay. And it shows wounds.

22 Q Okay.

23 MR. JACKSON: Your Honor, I would ask that that be
24 marked as the next in order of evidence.

25 THE COURT: All right. So for this voir dire,

1 we'll have separate evidence, right? Is this an exhibit
2 number in the trial already?

3 MR. JACKSON: It has not been marked yet, so I'm
4 fine with starting over, sort of for the purpose of the
5 voir dire process. However the Court wishes to do it.

6 THE COURT: So this will be a separate voir dire
7 with --

8 THE COURT REPORTER: Voir dire one?

9 THE COURT: Yes.

10 MR. JACKSON: So it's going to be Exhibit 1?

11 THE COURT: Yes.

12 THE COURT REPORTER: Voir dire one.

13 (Whereupon Voir Dire Exhibit No. 1, Photograph, was
14 marked as an exhibit.)

15 MR. JACKSON: Your Honor, just -- I want to move
16 this along.

17 This has been marked, but I think --

18 THE COURT: Hold on.

19 THE COURT REPORTER: I'm all set.

20 THE COURT: Okay.

21 MR. JACKSON: I'm so sorry.

22 THE COURT REPORTER: No. Go ahead.

23 MR. JACKSON: This one of the three -- one of the
24 three has already been marked, but if just for
25 consistency, I'd rather mark it additionally for voir

1 dire.

2 THE COURT: Yes, we need a separate record for the
3 voir dire.

4 MR. JACKSON: May I approach?

5 THE COURT: Yes.

6 MR. JACKSON: This one's already been marked, but
7 I'll remark it.

8 THE COURT: And if you'd tell me the exhibit
9 numbers that they are.

10 THE COURT REPORTER: In evidence or as we mark
11 them?

12 THE COURT: So you're putting these in now. There's
13 no objection, Mr. Lally?

14 MR. LALLY: For purposes of this, no.

15 THE COURT: Okay. So we'll mark these now, but.

16 MR. JACKSON: May I approach?

17 THE COURT: Yes.

18 MR. JACKSON: The one -- the one with the label
19 2858 on the bottom has previously been marked in the
20 trial.

21 I would ask that this be marked as the next in
22 order for the voir dire.

23 THE COURT: But what I want is the exhibit number
24 at the trial.

25 MR. JACKSON: Oh, I'll get that for you. I believe

1 it's Exhibit 19.

2 THE COURT: Okay.

3 MR. JACKSON: Is it 19? It's 19.

4 THE COURT: Okay. And is the third one also in
5 evidence you said?

6 MR. JACKSON: Two of the three have not been
7 marked. As soon as madam court reporter is ready.

8 THE COURT REPORTER: I'm all set. I'm ready.

9 THE COURT: She's ready.

10 MR. JACKSON: May I just establish the foundation?

11 THE COURT: Yes.

12 Q The following two photographs that I just showed
13 you, Doctor, do you recognize those?

14 A Yes.

15 Q Did you also review those in terms of -- in
16 furtherance of coming to your opinion -- opinions and
17 conclusions?

18 A Yes.

19 Q Do they also appear to be different photographs of
20 John O'Keefe's arm?

21 A Yes.

22 MR. JACKSON: I would move for the admission of
23 both of those, Your Honor, for purposes of the voir
24 dire.

25 THE COURT: There's been no objection to them. So

1 they're in. They're already marked.

2 MR. JACKSON: I just need to know which one's two
3 and which one's three. May I approach?

4 THE COURT: Yes.

5 (Whereupon Voir Dire Exhibit No. 2, Photograph, was
6 marked as an exhibit.)

7 (Whereupon Voir Dire Exhibit No. 3, Photograph, was
8 marked as an exhibit.)

9 MR. JACKSON: Okay. I've got it. With the Court's
10 permission may I publish --

11 THE COURT: Yes.

12 MR. JACKSON: -- for voir dire?

13 THE COURT: Yes.

14 Q Is this a photograph of the -- of John O'Keefe's
15 arm?

16 A Yes.

17 Q Is this is one of the several photographs that you
18 reviewed in coming to your opinions and conclusions?

19 A Yes.

20 Q I want to ask you a couple of questions about this.
21 There should be a laser pointer on the desk.

22 Can you explain to the jurors what it is about the
23 injuries that assisted you in coming to your opinion
24 and conclusion that this is from an animal attack?

25 A Okay. There's several patterns here. So for

1 instance, let's look here, right near the elbow, the
2 exterior part of the elbow. There's these two linear
3 marks which appear to be from upper teeth, and two
4 punctures below those which are superficial, meaning
5 they didn't go very deep into the skin, but they appear
6 from the lower teeth. So that's one pattern.

7 There are -- there's another pattern close to the
8 shoulder which shows parallel marks. There's two and
9 maybe a third one in the middle, parallel marks that
10 are oriented at a certain angle, and these are
11 superficial wounds, which are consistent with teeth
12 marks. They also could be possibly consistent with --
13 with nail marks, but.

14 Q With what?

15 A A nail from a claw.

16 Q Claw?

17 A Claw, yes.

18 Q All right.

19 A We have some more here, similar with -- from, you
20 know, obviously different teeth involved, or different
21 claws, and then over down here, closer to the wrist, we
22 have an unusual pattern of at least four striations,
23 the way I see it, at least four striations that I
24 believe are caused from the teeth towards the front of
25 the mouth near the arch. It appears that there's an

1 arch pad in here, so.

2 Q In a dog attack or in an animal attack in your
3 experience -- let me take this one down.

4 Just let's cover the ground on the three exhibits
5 that we've already marked. Can we take a look at
6 Exhibit 1?

7 (Voir Dire Exhibit 1 displayed.)

8 Q Is this just --

9 MR. JACKSON: May I publish your honor?

10 THE COURT: Yes.

11 MR. JACKSON: I apologize.

12 Q Is this just a close-up of the same injuries?

13 A Yes.

14 Q And do these appear to be consistent with what you
15 just testified to in terms of either the teeth or claw
16 marks, especially as it as it relates to the area of
17 closest to the elbow?

18 A Yes.

19 Q And then looking at Exhibit 3.

20 MR. JACKSON: May I publish?

21 THE COURT: Yes.

22 Q Is this a close-up view of the area closer to the
23 wrist that indicated those parallel you used the word
24 striations?

25 A Yes.

1 Q All right. And these appear to be taken attended to
2 the autopsy, as opposed to the other photograph,
3 Exhibit 2, that was taken in the hospital; is that
4 right?

5 A That is correct.

6 Q All right. And with that, would the time difference
7 account for the slight change in the nature of the
8 wound?

9 A It could.

10 Q The photograph of the wound I guess?

11 A It could or a different technique, yes.

12 Q Okay. You can take this down.

13 Did you take into consideration the lack - in
14 coming to your opinion and conclusion - the lack of
15 other injuries, for instance, fractures, broken bones,
16 or deep bruising, soft tissue injuries?

17 A Oh, yes.

18 Q How did that play into your opinion?

19 A Well, so of course, I considered, you know, what
20 else could have caused these wounds, you know, and
21 before coming to my conclusion. And so I wanted to
22 rule out other things, and there were no significant,
23 major bodily injuries outside the head. There was
24 nothing -- there were no fractures to the long bones,
25 the chest, the pelvis, you know, the arms. So, yes, so

1 having seen hundreds and hundreds of car accident
2 victims and people hit by cars, I ruled that out very
3 quickly.

4 Q Okay. And in terms of the injuries that you did
5 see, especially as they're attended to the arm, based
6 on everything that we discussed today, is it your
7 opinion, based on a reasonable degree of scientific
8 certainty that those injuries are consistent with an
9 animal attack as opposed to a vehicular -- motor
10 vehicular pedestrian incident?

11 A Yes.

12 MR. JACKSON: Thank you. That's all I have.

13 THE COURT: All right, Mr. Lally.

14 **CROSS-EXAMINATION**

15 **BY MR. LALLY:**

16 Q Good morning, ma'am.

17 A Good morning.

18 Q If I can take you back to you were talking about
19 some police training that you had received when you
20 were in the academy or while you were working with the
21 police department here in Massachusetts; is that right?

22 A Yes.

23 Q Okay. What kind of training did -- or what did that
24 training consist of?

25 A Well, I attended and graduated from the standard

1 police academy at that time, and then I took additional
2 courses that were offered from the Massachusetts
3 Criminal Justice Training Council, and these were
4 taught generally by experts in their fields, and they
5 were on a variety of subjects that are listed in, you
6 know, in my CV, including, you know, the hit-and-run
7 accident investigation, you know, forensic --

8 Q Let me stop you there just for a minute, ma'am,
9 Doctor. In reference to the -- your training as it
10 pertains to hit-and-run accidents, what -- what did
11 that training consist of?

12 A Oh, well, mechanisms of how accidents occur.
13 Mechanisms of how to determine, you know, what -- what
14 vehicle was involved in an accident there. I don't, you
15 know, it was a long, long time ago, but -- but, yeah,
16 so determining if people were struck by vehicles, what
17 vehicle was involved, or if it was auto versus auto
18 accident, what vehicles were involved.

19 Q And I don't mean to belittle this training
20 whatsoever, but is it fair to say that that was
21 relatively rudimentary training that you received in
22 the academy?

23 A Probably. I would not -- yes, okay, probably.

24 Q You don't have any training in crash reconstruction
25 or anything like that, correct?

1 A That is correct.

2 Q And am I correct, and you indicated that you're
3 board certified in emergency medicine; is that right?

4 A That's correct.

5 Q And so you're not board certified in forensic
6 pathology or anatomical pathology or any kind of
7 pathology?

8 A That's correct.

9 Q And the last time that you worked as a -- as a
10 coroner, when was that?

11 A The last time was in 1995 when I -- when I was
12 doing autopsies for the coroner's office. I have
13 since, though, consulted on numerous -- well, some
14 cases from the LA coroner's office.

15 Q What, about, 30 years ago was that, is that about
16 right?

17 A For autopsy, yes.

18 Q Yes. Now, have you ever testified in a case in
19 which either Mr. Jackson or Attorney Little were
20 counsel?

21 A Not that I'm aware of, no.

22 Q And when was it that you first were contacted in
23 reference to this case?

24 A The first contact was May 15.

25 Q May 15, of what year?

1 A May 17, excuse me, of this year.

2 Q Of this year, 2024?

3 A Yes.

4 Q And you went through a list of things that you were
5 provided, and you reviewed and you mentioned hospital
6 photos, correct?

7 A Yes.

8 Q Autopsy photos; is that correct?

9 A Yes.

10 Q An autopsy report; is that correct?

11 A Yes.

12 Q Grand jury testimony from the medical examiner; is
13 that correct?

14 A Yes.

15 Q A neuropathology report; is that correct?

16 A Yes.

17 Q A toxicology report; is that correct?

18 A Yes.

19 Q And then I think you also remembered some photos of
20 some clothing items, is that correct, as well?

21 A Yes, a shirt.

22 Q Did you review anything else?

23 A Yes, hospital ER records.

24 Q Hospital ER records?

25 A Yes.

1 Q Anything else that you can think of?

2 A No.

3 Q Did you ask for anything else to review?

4 A No.

5 Q Were you told of any other material that was
6 available for your review then that you weren't then
7 given?

8 A Well, I requested that my -- that I focus in on the
9 wounds, so I didn't ask for a lot of material in this
10 case.

11 Q But fair to say that you were looking for anything
12 and anything -- anything and everything, excuse me,
13 material to the wounds that you were asked to look at,
14 correct?

15 A They said -- please say that again?

16 Q Sure. Fair to say that you would want to look at
17 anything and everything that was related to the wounds
18 that you were asked to look at, correct?

19 A Yes.

20 Q And so did you make any specific requests as to
21 what material you were provided, or were you just
22 handed some material or forwarded some material and you
23 looked at what you were given?

24 A No, I requested that I have the autopsy
25 photographs, the ER records, the ER photographs. I

1 requested those.

2 Q Now, you mentioned some articles that you had
3 written that were published back in 1996 and 1997
4 related to dog bites; is that right?

5 A Yes.

6 Q Are those publicly available articles?

7 A Yes.

8 Q And in those articles that you wrote, you were
9 talking about law enforcement bites, correct?

10 A Yes.

11 Q So law enforcement K-9 bites typically involved
12 what people call sort of a bite and hold technique; is
13 that correct?

14 A Yes, yes.

15 Q So is there a difference between, through your
16 experience and the hundreds of dog bites that you've
17 seen, is there a difference between what you would
18 observe from a dog bite from a law enforcement K-9
19 versus a -- just your domesticated dog?

20 A Well, yes. Now the study, one of those studies, was
21 over 700 dog bite wounds, and there were two -- there
22 were two techniques used at that time - bite and hold,
23 and later on bark -- a bark and hold -- a bark and, you
24 know, bark and alert or something of that nature. So
25 there are different techniques, but, yes, to

1 specifically answer that -- the question which was are
2 they different from -- generally different from regular
3 domestic dog bites? Yes.

4 Q Now, did you write a report in regard to your
5 opinion that you've testified to here today?

6 A No.

7 Q And why not?

8 A I don't think there was much time, and I didn't
9 know if I was going to be actually testifying.

10 Q How long would it take you to write a report?

11 A I wasn't asked to write a report. Excuse me.

12 Q Were you asked specifically not to write a report?

13 A No.

14 Q Now, at any point in time, did you ever look at
15 anything related to Mr. O'Keefe's head injury?

16 A Oh, yes.

17 Q So you reviewed reports in relation to that,
18 correct?

19 A Yes.

20 Q Do you have any opinions as it pertains to that?

21 A I would rather defer to the pathologist and
22 neuropathologist on that.

23 Q So who contacted you about this case?

24 A I contacted a district attorney that I had worked
25 with in the past. We would -- we were discussing a

1 different case, a case that I autopsied in 1995,
2 and I mentioned that I heard that there was a dog --
3 there was a case in Massachusetts that might have been
4 being handled by one of his colleagues, his former
5 colleagues, and that there was an issue of whether
6 something was a dog bite, and that I might be able to
7 help in that case to clarify.

8 Q And so when you were provided this material, what
9 is it that you were specifically asked to do?

10 A To look at the wounds and the reports and the
11 materials that were sent to me and render an opinion.

12 Q And so before you had even been provided any
13 material, before you had even looked at anything, you
14 had already heard information related to there being a
15 dog bite involved in this case, correct?

16 A I had heard that there was a controversy, that
17 there's some certain wounds could have been a dog bite
18 versus perhaps inflicted by a motor vehicle. That's
19 what I had heard.

20 Q And so, ma'am, I'm just -- what I'm really trying
21 to get at, Doctor, is sort of the timeline here. Okay.
22 So you hear about this. When was that?

23 A Sometime just before May 17.

24 Q So sometime just prior to that, you hear about some
25 controversy in a case in Massachusetts involving a dog

1 bite. On May 17, you get -- reached out to by who
2 specifically?

3 A His name is John Lewin. He's an attorney in the LA
4 District Attorney's office.

5 Q And then who did you talk to after that?

6 A I reached out to him. I said I might be able to
7 clarify, and then he reached out to Mr. Jackson, I
8 believe, and then Mr. Jackson contacted me.

9 Q And not asking specifically anything you spoke
10 about, but at some point the discussion came
11 specifically to dog bites, correct?

12 A Yeah, he sent me the materials. He asked me my
13 opinion.

14 Q He sent you the materials, asked you your opinion.
15 When did you provide that opinion?

16 A Probably the next day. Yes, I know it was the next
17 day.

18 Q So the very next day on May 18, you provided an
19 opinion?

20 A Yes.

21 Q And was that opinion provided in a written fashion,
22 orally, how was that provided?

23 A Orally.

24 Q So you reached out or to someone shortly before May
25 17, spoke to Mr. Jackson on the 17th, received all the

1 material, and then had an opinion by May 18?

2 A Yes.

3 Q But you didn't write any of that down?

4 A No.

5 Q Now, beyond the materials that you were provided,
6 what else were you told about the case?

7 A I was told that the victim was a police officer.
8 The decedent was a police officer. I was told
9 that the -- well, the defendant had been charged,
10 and I was told that the -- that there was a controversy
11 about whether or not these injuries had been caused by
12 motor vehicle. And I was also told, and I read in the
13 medical record, that the decedent was found outdoors, I
14 believe in the snow and hypothermic.

15 Q Now, in regard to what you reviewed, you didn't
16 review any investigative reports; is that correct?

17 A That is correct.

18 Q You didn't review any witness statements; is that
19 correct?

20 A That's correct.

21 Q You didn't review any lab reports as far as from
22 the forensic lab or anything like that?

23 A I reviewed the toxicology report.

24 Q Beyond that, any other --

25 A If it was part of the autopsy report, I reviewed

1 it.

2 Q So you reviewed every thing attended to the medical
3 examiner's file; is that correct?

4 A Yes.

5 Q Okay. But nothing from the lab beyond that?

6 A I don't believe I did.

7 Q Now, this first instance when you say you heard
8 about it, how did you hear about it?

9 A Well, I believe -- I believe it was via a
10 headline that I received in my email from the from
11 "Boston Globe" headline. You know, it was some kind of
12 a, you know, there was some kind of interesting case.
13 And I got it as an email and I looked into it.

14 Q And when was that?

15 A Well, that was that week in May that, you know,
16 just a few days before May 17.

17 Q Did you subscribe to "The Boston Globe" online.

18 A I did at that time. I have not renewed it.

19 Q How long had you been a subscriber to "The Boston
20 Globe" prior to --

21 MR. JACKSON: Objection.

22 THE COURT: I'm going to allow it.

23 A Probably a year or six months. Six months to a
24 year.

25 Q And there was never any headlines or anything else

1 that you saw about this prior to that -- that week just
2 before May 17?

3 A Not that I paid attention to.

4 MR. LALLY: I have nothing further, Your Honor.

5 THE COURT: Anything further, Mr. Jackson?

6 MR. JACKSON: Nothing further.

7 THE COURT: All right. So since this is a voir
8 dire, I get to ask questions, Doctor.

9 THE WITNESS: Oh, yes. Okay.

10 THE COURT: I just have a couple of questions for
11 you. I don't think I really heard you. So could you
12 tell me again what your opinion is, and to what degree
13 you hold that opinion?

14 THE WITNESS: Yes. These injuries in the arm are --
15 my opinion is that they are the result of animal bites
16 or scratches.

17 THE COURT: Do you know what kind of animal?

18 THE WITNESS: Yes, most likely dog, large dog.

19 And I'm very reasonable -- very sure to, you know,
20 what's the word I want, medical certainty, very -- the
21 high degree of medical certainty.

22 THE COURT: Reasonable degree of medical certainty?

23 THE WITNESS: Yes, definitely.

24 THE COURT: Okay. And another question. So I
25 received information that you also viewed all reports

1 associated with Chloe and the dog's prior bite history.
2 Did you review those?

3 THE WITNESS: No, I don't recall ever seeing
4 anything like that.

5 THE COURT: And that you also reviewed
6 the UC Davis DNA testing results submission forms.

7 THE WITNESS: No, I don't recall seeing them.

8 THE COURT: Okay. Any follow-up? Any questions
9 based on my questions?

10 MR. LALLY: Not for the Commonwealth.

11 MR. JACKSON: No, Your Honor.

12 THE COURT: All right. You are all set, Doctor. I
13 don't know yet whether you'll be testifying.

14 THE WITNESS: Okay.

15 THE COURT: We'll try and let you know. You're
16 going to be around for a few days?

17 THE WITNESS: No.

18 THE COURT: Okay. We'll let you know as soon as we
19 can.

20 THE WITNESS: Okay, okay.

21 THE COURT: Thank you.

22 THE WITNESS: Thank you.

23 THE COURT: So I would like to hear argument on
24 this witness before we hear the other witnesses, so.
25 And, Mr. Yanetti, I asked you the other day whether she

1 reached out to you or you reached out to her, and you
2 said there was an intermediary. But my concern was
3 whether she came out of nowhere and reached out about
4 this case, and that it seemed sort of --

5 MR. JACKSON: It wasn't Mr. Yanetti. It was me.

6 THE COURT: Okay.

7 MR. JACKSON: It was me.

8 THE COURT: Okay. All right. So the question I
9 asked was answered pretty much by this witness, whether
10 she saw something and decided she wanted to come here.

11 All right. It's the Commonwealth's motion. What
12 are you asking me to do? Again, I found a violation of
13 Rule 14. There are two concerns here - the competency
14 of the witness's testimony, how much she can testify
15 to, whether she should testify at all. What is it
16 you're asking me, Mr. Lally?

17 MR. LALLY: Your Honor, I'm asking that the witness
18 be excluded from testifying at the trial for the
19 violation of Rule 14, specifically, I believe it's Rule
20 14A6. This is a witness, as the Court picked up on,
21 that reached out, albeit through an intermediary, with
22 reference to just sort of discovering or coming upon
23 this case in several weeks into the trial, it is
24 concerning, given the fact that the witness represented
25 that she had a subscription to the "Globe" online,

1 received word of this, and the first time that she had
2 ever seen it or it grabbed her attention was in that
3 first week of May, when, as the Court is well aware,
4 there's been widespread media coverage, particularly
5 through "The Boston Globe," for years at this point.
6 The limitations of the testimony, it's also concerning
7 because the disclosure from counsel indicated, again,
8 as the Court had noted, I didn't want to get into it
9 too much as far as for purposes of this voir dire, but
10 there was additional material that was indicated in the
11 disclosure that the witness had reviewed, including the
12 UC Davis related to the canine DNA or the lack thereof,
13 as well as, forgive me, the dog bite history of that
14 specific dog, which also I would note for the Court,
15 includes photographs of what a dog bite from that
16 specific dog looks like. And that specifically,
17 apparently, was not provided to this witness, who is
18 then opining on inferably at least, that that dog was
19 the cause of these particular injuries. However, was
20 not shown specifically anything to do with that bite
21 history, as far as by way of reports or photographs.

22 So that juxtaposed or coupled with the immensely
23 late disclosure, I mean, we're talking about at least
24 the sixth week of trial by the time this witness is
25 even mentioned. Not on the defendant's witness list,

1 not mentioned at any point in time during the pendency
2 of the case, and then sort of pops up in the middle of
3 May and to the point that the limited amount of
4 material or information that's provided by counsel, as
5 far as disclosure or opinion doesn't come until today.

6 So for all those reasons, Your Honor, the
7 Commonwealth is requesting that her testimony in its
8 entirety be excluded from this trial.

9 THE COURT: Mr. Jackson.

10 MR. JACKSON: Your Honor, exclusion is the highest
11 form of punishment. It's the highest form of sanction
12 that the Court has available to it. I mean just to put
13 a fine point on it. It is a -- it is a dire, dire
14 remedy. And I know the Court has mentioned two or three
15 times, "I'm finding a violation of Rule 14." That
16 sounds as if the Court is suggesting or has inferred
17 that we did something wrong. We didn't do anything
18 wrong. As the Court learned, I didn't reach out to
19 her. She reached out and said, hey, look, I've got some
20 experience with this.

21 THE COURT: I asked you that the other day, though,
22 and you -- I was told that you reached out to her
23 through an intermediary. I wasn't told she reached out
24 to you through an intermediary.

25 MR. JACKSON: I don't know that there's a

1 difference. I mean --

2 THE COURT: What I was trying to get at is this
3 somebody who read about this case and said, you know, I
4 want to be part of that. That's what I was trying to
5 get at. I think it was pretty clear, Mr. Jackson. Go
6 ahead. Continue with your argument.

7 MR. JACKSON: Okay. I did not misrepresent
8 anything to the Court.

9 THE COURT: I didn't say that.

10 MR. JACKSON: I take offense at the Court's tone
11 that you're -- yes, you did say that. You just said
12 that. You said, I just heard the testimony, and it's
13 not what I said the other day. I know a person in Los
14 Angeles DA's office. I received a text message from
15 that person saying there's someone who reached out to
16 me who said, I might be able to elucidate on this
17 controversy concerning the dog bites. I then reached
18 out to her. So when you asked me, who reached out to
19 whom, I reached out to her through an intermediary, my
20 friend in the DA's office back in Los Angeles County. I
21 wasn't misinforming the Court.

22 THE COURT: So maybe it wasn't clear what I was
23 looking for. I think it was clear. But go ahead.
24 Continue with your argument on this.

25 MR. JACKSON: My point is Rule 14 requires a

1 sanction if, in fact, the attorney has done something
2 wrong. In other words, it connotes the idea that we're
3 doing something by actively hiding evidence or holding
4 back evidence, or not providing evidence that you know
5 you're going to use at some point in an effort to take
6 a tactical advantage, and the sanction for that is
7 exclusion. I've never met this woman. First time I laid
8 eyes on her was during the process after she flew out
9 here to engage this -- this voir dire process. She
10 indicated I could potentially provide some information
11 about this controversy concerning dog bites. I then
12 sent her materials. I talked to her. I sent her
13 materials. I found her to be incredibly credible. I
14 found her to be experienced, and I found her to be
15 knowledgeable in this very specific area, which is
16 rare. There's not that many people who have published
17 -- doctors who have published in the area of dog bites,
18 specifically. So I thought it makes sense for me to
19 reach out to her and talk to her, which is exactly what
20 we did.

21 And within a couple of days, literally, you could
22 almost count it by the hours, of me receiving her
23 information, we then had a discussion amongst
24 ourselves. Is this somebody that we want to then
25 present on the defense side, on the defense case, and

1 we turned the information over to Mr. Lally.

2 I understand that it was well into the trial, but
3 it's -- that's not a fault of ours, and I don't think
4 the sanction of exclusion is necessary or appropriate
5 to punish Ms. Read from having an experienced witness
6 testify in rebuttal to ultimately what Dr. Sordi-Bello
7 and the Commonwealth is going to present in their case
8 in chief. That's what she's going to do. She's going
9 to present contrary evidence or an alternative theory
10 of where those injuries came from. To a person,
11 everybody on the Commonwealth's side who can elucidate
12 about this has said those injuries come from a tail
13 light, including Mr. Paul yesterday. We have contrary
14 evidence, and Ms. Read should be entitled to present
15 that evidence, even though it came late. It didn't come
16 late by any fault of ours, and I don't believe that the
17 Commonwealth has made out a prejudice that they can't
18 overcome. It's late, obviously, Mr. Lally is a skilled
19 lawyer. There's nothing to say that he can't or hasn't
20 been able to prepare for the cross-examination or for
21 an exam -- an examination in front of the jury, and I
22 just don't think exclusion is appropriate. And I'll
23 submit.

24 THE COURT: So the second part of this argument,
25 and I'll start with the Commonwealth first. So in your

1 motion to exclude, you also raise *Daubert* type
2 concerns. So, Mr. Lally, is there portions, if I permit
3 her to testify, are there portions -- and focus
4 specifically on the part of her opinion where she says
5 I guess the defense expects her to be able to say she
6 will testify that these injuries are inconsistent with
7 having been struck by a vehicle, road rash, or
8 scratches from broken glass or taillight material.

9 THE COURT: I think you have an uphill battle on
10 that part, Mr. Jackson. Commonwealth, what do you say
11 if she -- if she testifies, what should she be able to
12 testify to? And don't just say nothing. I'd want some
13 input.

14 MR. LALLY: No, no. If the Court were to permitted
15 to test -- the doctor to testify, Your Honor, what I
16 would submit would be permissible testimony from a
17 legal standpoint. I have some factual questions in
18 regard to that. But from a legal standpoint, I think
19 the Court could permit her to testify as to the
20 injuries that she observed, her work and history in
21 that area, observing prior injuries related to animal
22 attacks, and whatever consistency she believes that
23 they have with that. I do not think it would be proper
24 to allow this witness to testify or opine anything
25 about the inconsistency with regard to pedestrian

1 injuries. I don't think any proper foundation has been
2 laid for there, whether it be through experiential
3 knowledge in relation to that, or any sort of, you
4 know, specialized training or knowledge or anything to
5 do with that. Anything from a forensic pathology or
6 anatomical pathology perspective, I think should also
7 be out of bounds and excluded with regard to this
8 witness. She's certainly a very experienced emergency
9 room physician, so anything in relation to that, I
10 think it's permissible. But as far as the, you know,
11 experience when it comes to motor vehicle crashes or
12 pedestrian crashes, of which the Court is well aware,
13 there are a litany of different types of interactions a
14 pedestrian can have with a motor vehicle in a collision
15 sequence. And simply saying, well, there was no
16 injuries to the legs, so it couldn't have been a motor
17 vehicle collision is just -- just plain wrong and not
18 backed up by science or anything else that this witness
19 can testify to from the very limited experience she has
20 in that realm.

21 So if the witness were able or permitted by the
22 Court to testify, I would submit that her testimony
23 should be relegated to simply, what if any opinions her
24 experience obviously, and then, what if any opinions
25 she draws with regard to the causation of the injuries

1 on the right arm, as it pertains to consistency there.
2 But I venture to guess that it's likely that those are
3 probably also going to be, in her opinion, consistent
4 with many other causes beyond that, if she's being
5 reasonable.

6 THE COURT: All right, Mr. Jackson.

7 MR. JACKSON: I'll submit, Your Honor. I have no
8 issue with -- I just said I'll submit. I'm not
9 submitting.

10 I have no issue with limiting her testimony to the
11 animal attack issue, the dog attack issue. I didn't, as
12 the Court noted, I didn't spend any time -- I think I
13 may have asked one question, is it consistent with a
14 motor vehicle incident. I have no problem if the Court
15 wants to limit her testimony to the dog bite aspect and
16 not the motor vehicle aspect.

17 I wasn't planning on going into that aspect anyway,
18 because I've got another pathologist who's going to do
19 exactly that.

20 THE COURT: But you did go through it with her, and
21 it's on your disclosure.

22 MR. JACKSON: It is, but I have no problem editing
23 and --

24 THE COURT: So why is it on the disclosure or what
25 the Commonwealth turned over that she viewed all

1 reports associated with Chloe's bite history and the UC
2 Davis DNA testing? Why is that in there?

3 MR. JACKSON: Because we sent that in a drop box.
4 We set everything in a drop box, and I assumed that she
5 reviewed it. She must not have seen it or opened it or
6 reviewed it. I didn't know. But that's what was sent
7 to her. Everything that's in the disclosure is what was
8 sent to her.

9 THE COURT: If she's permitted to testify, you led
10 her through quite a bit today, you won't be able to. I
11 mean, she struggled with to what degree of certainty
12 she held an opinion.

13 MR. JACKSON: Understood.

14 THE COURT: She struggled to what she viewed. She
15 didn't write a report. I have to consider all of these
16 things, too, as the gatekeeper as to whether she can
17 actually assist the jury. So I'm not deciding this
18 right here.

19 Mr. Lally, if I do permit her to testify, I will
20 give you time to absorb this testimony and to find an
21 expert in rebuttal for this. How long might something
22 like that take?

23 MR. LALLY: Not terribly long, Your Honor. As far
24 as preparation, I can't give an exact time frame on
25 that. As far as a rebuttal witness, I'd say a week at

1 the most.

2 THE COURT: A week from today.

3 MR. LALLY: Yes.

4 THE COURT: Why don't you start looking at least,
5 all right, while I decide. I won't know until
6 Thursday.

7 MR. JACKSON: Sure.

8 THE COURT: All right. Anything else on this
9 witness?

10 MR. JACKSON: Submitted, Your Honor.

11 THE COURT: All right. Next witness, please.

12 MR. JACKSON: With regard to Dr. Wolfe and Dr.
13 Rentschler, this is a different scenario and I'm
14 presuming that the Court is asking for a voir dire on
15 their qualifications only.

16 THE COURT: Well, I want to know who did what. I
17 want to know -- they say we. I want to know who did
18 what.

19 MR. JACKSON: Is the Court suggesting that I go
20 through the entire -- their entire testimony of exactly
21 what they did - their testing, their opinions,
22 conclusions, the basis of their opinions and
23 conclusions?

24 THE COURT: However you want to do it, Mr. Jackson.
25 We're here today on the Commonwealth's motion.

1 MR. JACKSON: I realize that, but that's -- it's
2 not the Commonwealth's motion to depose our experts.
3 The Commonwealth's motion is they're not qualified as
4 accident reconstructionists. I don't need to go -- and
5 I'm not inclined to give them a free bite at the apple
6 to cross-examine these witnesses twice on the basis of
7 their opinion. I will go through, I think, to the
8 Court's satisfaction. I don't think it's going to take
9 long to figure out that they're extraordinarily
10 qualified to render opinions, but I don't think it's
11 incumbent upon me to walk through their entire
12 testimony and give the Commonwealth a free bite at the
13 apple like it's a deposition.

14 THE COURT: Whatever you want to do.

15 MR. JACKSON: Okay.

16 THE COURT: I'm not telling you what to do.
17 Whatever you want to do.

18 MR. JACKSON: Dr. Wolfe.

19 DANIEL WOLFE, sworn

20 THE COURT: Whenever you're ready, Mr. Jackson.

21 MR. JACKSON: Thank you, Your Honor.

22 **DIRECT EXAMINATION**

23 **BY MR. JACKSON:**

24 Q Sir, could you please state your name and spell
25 your last name for the record?

1 A Daniel Wolfe, last name is spelled W-O-L-F-E.

2 Q Sir, what do you do for a living?

3 A I am the director of accident reconstruction at a
4 company known as ARCCA, A-R-C-C-A.

5 Q And tell us a little bit about ARCCA, if you could
6 explain for the Court what ARCCA is and what its
7 primary mission is.

8 A So ARCCA is a forensic consulting engineering
9 company. We have a variety of disciplines that include
10 biomechanics, failure analysis, human factors, premise
11 liability, crash worthiness, and accident
12 reconstruction.

13 Q Is accident -- you said that you were the current
14 director of accident reconstruction, correct?

15 A That is correct.

16 Q Is that a specialty of ARCCA, specifically?

17 A Yes, sir.

18 Q And what sort of contracts does ARCCA routinely
19 engage in?

20 A We typically work for law firms, insurance
21 carriers.

22 Q What about other clientele, for instance, maybe
23 it's an insurance carrier or a law firm, but what about
24 the ultimate client, the military, Department of
25 Defense, have you contracted with other entities or

1 agencies, sporting -- sporting agencies?

2 A Certainly, yes. We've done research for the
3 military. We do player safety for the NHL. So, yes, we
4 are involved in a number of research projects as well.

5 Q And in terms of ARCCA and its commissions and
6 consultation, is it known both nationally and
7 internationally, is it recognized as a leader in the
8 area of accident reconstruction?

9 A Yes.

10 Q As the director of accident reconstruction, do you
11 specialize in not only accident reconstruction, but
12 human factors as well?

13 A Yes, sir.

14 Q Can you give me a synopsis of the professional
15 discipline of accident reconstruction? What is accident
16 reconstruction?

17 A Well, I think that's a very broad topic. I look at
18 the cases that come across my desk. You know, I've been
19 involved with pedestrian impacts, and that can be
20 pedestrians hitting the side of vehicles, fronts,
21 backs, getting run over by vehicles, being struck by a
22 vehicle then projected into another vehicle. I've dealt
23 with your simple fender bender collisions. I've dealt
24 with collisions that involve 60 car pileups on a
25 highway. So again, accident reconstruction in terms of

1 the scope for a case, it can really vary case to case
2 depending on the facts and circumstances of that case.

3 Q And when you say dealt with, are you talking about
4 literally going into, from an engineering and a
5 scientific standpoint, trying to reconstruct what
6 happened, what the causal effects were of that
7 accident, and what the results were, the results of
8 damage or injuries were?

9 A Absolutely.

10 Q What about human factors? What does that discipline
11 entail? What is human factors?

12 A Well, to give you an example of that, so I do a lot
13 of nighttime visibility work where, for instance, let's
14 say a pedestrian is coming down to the roadway at
15 night. Maybe it's not a lit roadway, and you're relying
16 on your vehicle headlights to illuminate that
17 pedestrian. So it's determining when would a driver
18 recognize that individual on the roadway based upon the
19 headlights, if there is any artificial lighting, their
20 clothing. And then we look at how do drivers respond
21 based upon that scenario that they're presented with.
22 So we know that response times are different, depending
23 on the hazard that's presented to them. So if it's a
24 pedestrian coming to the roadway, it's a vehicle
25 stopping in front of you. So that's the application of

1 human factors.

2 Q And that might include everything from passenger
3 vehicles, commercial vehicles, bicycle issues,
4 motorcycle issues, things of that nature?

5 A Yes, sir.

6 Q Okay. What education, training, and background
7 qualifies you to perform the duties that you just
8 described as director of accident reconstruction at
9 ARCCA?

10 A In terms of my educational background, I received a
11 Bachelor of Science in Engineering from James Madison
12 University back in 2012, along with a minor in
13 mathematics. Some of my course work while at James
14 Madison included courses in physics, statics, dynamics,
15 kinematics, material science, and the -- your typical
16 engineering sciences.

17 Subsequent to my undergraduate degree, I then went
18 on to the University of Delaware to pursue my PhD in
19 electrical and computer engineering with a
20 concentration in electromagnetics and photonics.

21 Q Did your research area also include physics include
22 -- in addition to electromagnetics?

23 A Yes, sir.

24 Q Optics?

25 A Yes, sir.

1 Q Photonics?

2 A Yes, sir.

3 Q And lighting?

4 A Correct.

5 Q Are you accredited as a traffic accident
6 reconstructionist?

7 A Yes, sir.

8 Q By whom?

9 A By an organization known as ACTAR which is the
10 Accreditation Commission for Traffic Accident
11 Reconstructionists.

12 Q Are you trained in photogrammetry to determine
13 vehicle track -- crash and map scene evidence from
14 photographs?

15 A Yes, sir.

16 Q In other words, looking at a photograph rather than
17 being at the scene, that is a specialty or special --
18 specific area of training that you've engaged, correct?

19 A Yes, sir.

20 Q Are you trained in Bosch crash data retrieval
21 analysis?

22 A Yes, sir.

23 Q Otherwise known as CDR analysis, right?

24 A Correct.

25 Q In terms of professional associations and

1 accreditations, are you certified by the Society of
2 Automotive Engineers?

3 A Yes, I'm a member of that organization.

4 Q What about being a member of Optical Society of
5 America?

6 A Yes, sir.

7 Q Illuminating Engineering Society?

8 A Yes, sir.

9 Q And finally, the National Association of
10 Professional Accident Reconstruction Specialists?

11 A Yes, sir.

12 Q You're accredited by all of those organizations; is
13 that right?

14 A I'm a member of all of those, yes, sir.

15 Q Have you authored peer reviewed articles in the
16 area that we just discussed?

17 A I've authored a number -- authored a number of
18 papers in the field of physics, and one of my most
19 recent publications was that dealing with Toyota and
20 Lexus vehicle control history records.

21 Q In 2021, did you author or co-author a peer
22 reviewed article known as "Collision: The International
23 Compendium for Crash Research Dealing with Vehicle
24 Control History and Braking Issues"?

25 A Yes, sir.

1 Q Have you qualified in other courts to testify as an
2 expert in the area of accident reconstruction?

3 A Yes, sir.

4 Q Importantly, were you hired by the defense in this
5 case?

6 A No, sir.

7 Q Before this morning when you walked into court, had
8 you and I ever met face to face?

9 A No, sir.

10 Q In terms of your -- the commission that you were
11 asked to undertake in this case, that have anything to
12 do with the defense?

13 A No, sir.

14 Q That have anything to do with the Commonwealth?

15 A No, sir.

16 Q So a third party agency hired you and commissioned
17 you, or ARCCA, with the responsibility of doing an
18 accident reconstruction in this case, correct?

19 A Correct.

20 Q The person to my left, this -- the female to my
21 left sitting here, have you ever seen her before?

22 A Nope.

23 Q Do you know who she is?

24 A Yes.

25 Q How many times have you been qualified in other

1 courts to testify as an expert in the area of accident
2 reconstruction?

3 A I think that's around 20 times to date.

4 Q In both federal and state court?

5 A Just state court.

6 Q Multiple states?

7 A Yes, sir.

8 Q Your analysis, conclusions, and opinions are
9 completely independent, whatever they are, those
10 analysis, conclusions, and opinions in this case are
11 completely independent of the defense and of the
12 Commonwealth; have I got that right?

13 A It's based on the evidence. That's correct.

14 Q And you're not paid by either side here in this
15 courtroom?

16 A Correct.

17 Q You and your team were asked to undertake a review
18 for purposes of accident reconstruction of the case
19 that's now pending before the Court; is that right?

20 A That's correct.

21 Q Who at ARCCA was assigned to the team who
22 ultimately would undertake that analysis?

23 A So it was myself, Dr. Andrew Rentschler, and Scott
24 Klein.

25 Q And Scott Klein has a Master of Science, is that

1 right?

2 A I believe he's got a Bachelor of Science in
3 Mechanical Engineering, yes.

4 Q In engineering?

5 A Correct.

6 Q All right. And Dr. Rentschler is a PhD in what
7 area?

8 A Biomechanical engineering.

9 Q All right. Were you provided and did you review
10 certain materials in furtherance of your consultation
11 in this matter?

12 A Yes, sir.

13 MR. JACKSON: If I can have just a moment, Your
14 Honor.

15 THE COURT: Yes.

16 Q I'd like to use my time efficiently, Doctor. I'm
17 going to read through a number of materials that you
18 reviewed.

19 MR. JACKSON: Before I do that may I approach, Your
20 Honor?

21 THE COURT: Yes.

22 Q I just want you to take a look at the first two
23 pages of that document and tell me if you recognize
24 that.

25 A Yes, sir.

1 Q What is that? What are those two pages?

2 A These are the first two pages from the report that
3 ARCCA issued in regards to this matter.

4 Q Do you see a list of fourteen items on those two
5 pages?

6 A Yes, sir.

7 Q Is that an accurate reflection of the items that
8 you were provided by this other agency to review in
9 terms of coming to your opinions and conclusions
10 concerning this case?

11 A Yes, sir.

12 MR. JACKSON: May I approach, Your Honor?

13 THE COURT: Yes.

14 Q Those items include the Norfolk SPDU Homicide Death
15 Report, correct?

16 A Correct.

17 Q The Commonwealth of Massachusetts, Department of
18 State Police, crime scene report, correct?

19 A Correct.

20 Q The OCME dispatch removal report, correct?

21 A Correct.

22 Q Photographs of the incident location?

23 A Correct.

24 Q Videos of the incident location?

25 A Correct.

1 Q Photographs of the 2021 Lexus LX570?

2 A Correct.

3 Q Photographs of recovered evidence?

4 A Correct.

5 Q Crash data retrieval report from the 21 -- 2021
6 Lexus 570?

7 A Correct.

8 Q Report of autopsy?

9 A Correct.

10 Q Autopsy photographs?

11 A Yes.

12 Q Three dimensional laser scan data of a Lexus LX570?

13 A Yes.

14 Q A VIN LINK V-I-N, capital L-I-N-K report sheet for
15 the 2021 Lexus LX570?

16 A Yes.

17 Q Expert auto stats data sheets for a 2021 Lexus
18 LX570?

19 A Yes.

20 Q And publicly available literature, including, but
21 not limited to, the documents cited within the report,
22 learned treatises, textbooks, and scientific standards,
23 correct?

24 A Correct.

25 Q All of those items and data were reviewed by you

1 and your team in coming to your conclusions and
2 opinions in this case, correct?

3 A Yes, sir.

4 Q And I'd like to ask you one other series of
5 questions concerning sort of who did what. Your report
6 indicates that there were, in no small part, two
7 undertakings, if I can -- if I can ask them in terms of
8 pillars. The damage to the vehicle and the injuries to
9 the body of John O'Keefe, correct?

10 A I would say that's a fair characterization, yes.

11 Q And I may be butchering this a bit because I'm not
12 being very scientific, but were you more responsible
13 for the vehicle damage or the injury damage?

14 A The vehicle damage.

15 Q And who on your team was more responsible for the
16 injury damage?

17 A That would be Dr. Andrew Rentschler.

18 Q Obviously, Dr. Wolfe, in coming to your opinions
19 and conclusions concerning the damage to the vehicle,
20 you had to consider the damage to the human being,
21 correct, John O'Keefe?

22 A Correct.

23 Q And as the -- as the team leader, in terms of Dr.
24 Rentschler coming to his conclusions and opinions
25 concerning the damage to the human being, he also had

1 to consider the damage to the vehicle and the interplay
2 of the two, correct?

3 A Correct, we work together.

4 Q Is that -- I was just going to say, is that how you
5 two and Mr. Klein work together to come to the opinions
6 and conclusions that are cited in your multipage
7 report?

8 A Yes, sir.

9 MR. JACKSON: Thank you. That's all I have, Your
10 Honor.

11 THE COURT: Okay. Mr. Lally.

12 MR. LALLY: Thank you, Your Honor.

13 **CROSS-EXAMINATION**

14 **BY MR. LALLY:**

15 Q Good morning, sir.

16 A Good morning.

17 Q Now, you went through a list of about 14 things
18 that are contained within your report that your firm or
19 your agency was provided with that you reviewed,
20 correct?

21 A That is correct.

22 Q Did you specifically review all 14 of those things,
23 or was that done as sort of a team?

24 A Yes, I looked through all the documents.

25 Q Okay. So you personally looked at all 14 of those

1 items that are listed within the report?

2 A Yes, sir.

3 Q And you indicate that it was your opinions or what
4 you did in this case that was you were asked to answer
5 specific questions, correct?

6 A Yes.

7 Q Okay. So it wasn't like you were just tasked with,
8 like, hey, here's some facts. Go do or take a look at a
9 crash reconstruction, or create a crash reconstruction.
10 You were asked very specific questions, and you tried
11 to answer them the best you could, correct?

12 A I don't know that there were specific questions. I
13 think ultimately it was an open-ended question.

14 Q But related to two -- you testified as to two
15 specific areas that your firm or your agency looked at,
16 right?

17 A Those are the disciplines that the report covers,
18 yes.

19 Q Okay. Well, you had testified about some other
20 areas of expertise as far as human factors, visibility,
21 luminescence, things like that. You didn't do any of
22 those things here, correct?

23 A It wasn't part of my scope in this case.

24 Q Okay. And the scope, in your case, you indicate
25 that it was based on the evidence, correct?

1 A That is correct.

2 Q Now, to be fair, that's based on the evidence that
3 you were provided, correct?

4 A Correct.

5 Q So what did Mr. Klein do?

6 A So as a part of the engagement with the entity that
7 ultimately retained us in this, due to the
8 confidentiality of it, only those who had access to the
9 material to the file were allowed to review it and
10 discuss it. And essentially, Scott Klein served as
11 kind of another reconstruction expert to essentially
12 bounce ideas off of and help with the review.

13 Q So for lack of a better term sort of provided,
14 let's say, sort of technical review of your work and
15 Dr. Rentschler's work; is that correct?

16 A I would say assist us with the analysis, yes.

17 Q And obviously your firm or your agency issued a
18 report in relation to what you did, correct?

19 A That's correct.

20 Q And you've obviously had time to review that report
21 as far as what's contained in there, factually, as well
22 as conclusions and opinions, things of that nature?

23 A Yes.

24 Q So was it your testimony that anything that has to
25 do with anything, factually, conclusions, opinions, or

1 otherwise in relation to the motor vehicle damage,
2 those are your opinions, those are your conclusions,
3 correct?

4 A I would say that's fair, yes.

5 Q And again, based on the evidence that you were
6 provided, correct?

7 A Correct.

8 Q And so the facts or evidence or conclusions or
9 opinions related to injuries to Mr. O'Keefe, that was
10 Dr. or Mr. Rentschler's area; is that fair to say?

11 A Dr. Renschler, yes.

12 Q And again, that was based on the evidence or
13 whatever he was provided, correct?

14 A Correct.

15 Q Which would be the same materials that you had
16 testified that you reviewed, correct?

17 A Correct.

18 MR. LALLY: I have nothing further.

19 THE COURT: Anything further, Mr. Jackson.

20 MR. JACKSON: Submit, Your Honor. Thank you.

21 THE COURT: All right. So, Doctor, I just have one
22 question for you. What specifically were you asked to
23 do?

24 MR. JACKSON: I'm sorry, Your Honor, I didn't hear
25 the Court's question.

1 THE COURT: What specifically were you asked to do?

2 THE WITNESS: So the agency that retained us, gave
3 us a selected quantity of file material related to this
4 case, and essentially left it as an open-ended
5 question: Ultimately, was the evidence consistent with
6 a pedestrian interaction between Mr. John O'Keefe and
7 the Lexus.

8 THE COURT: You said selected quantity of
9 information. Who selected that information?

10 THE WITNESS: As far as I'm concerned, it was -- it
11 would be the Department of Justice and the FBI.

12 THE COURT: All right. And they just gave you what
13 they wanted to give you as far as you know?

14 THE WITNESS: We had no say in what material was
15 handed over to us.

16 THE COURT: Okay. All right. Thank you very much.
17 Any questions based on my questions?

18 MR. JACKSON: No, Your Honor.

19 THE COURT: Mr. Lally?

20 MR. LALLY: Just briefly.

21 Q (By Mr. Lally) And I apologize for this. I'm just
22 unaware. Is it Mr. Wolfe or Dr. Wolfe?

23 A Dr. Wolfe is fine.

24 Q Dr. Wolfe, okay. So, Dr. Wolfe, when you say that
25 you were asked specifically whether or not the

1 evidence, the limited scope that you were provided was
2 consistent with a pedestrian collision, were you asked
3 sort of in general terms as far as any type of
4 pedestrian collision or were you asked specifically as
5 far as biomechanically could, say, the injury to the
6 back of Mr. O'Keefe's head had been caused by contact
7 with the vehicle. How open-ended was this question?

8 A Again, I think it relates to is the vehicle damage
9 consistent with the pedestrian impact, and are the
10 injuries consistent with pedestrian impact?

11 Q Okay. And again, the whole panoply of injuries; is
12 that correct?

13 A I'm sorry, what was your question?

14 Q Let me rephrase. So did anybody specifically ask
15 you to determine whether or not the injuries to the
16 back of Mr. O'Keefe's head could have been caused by a
17 motor vehicle?

18 A I don't know that they asked us specifically.
19 Again, they basically asked us to perform an accident
20 reconstruction and biomechanical analysis and basically
21 tell them our findings, and these are our findings.

22 Q And in the materials that you reviewed, did you see
23 anything in there of any sort of statements,
24 suggestion, intimation, anything at all that suggested
25 that the injuries or the fracture to the back of Mr.

1 O'Keefe's head was caused by a motor vehicle?

2 A In terms of direct contact?

3 Q Yes.

4 A No, I don't believe so.

5 MR. LALLY: Nothing further.

6 THE COURT: Anything?

7 MR. JACKSON: Nothing.

8 THE COURT: All right. Dr. Wolfe, you are all set,
9 sir.

10 THE WITNESS: Thank you.

11 ANDREW RENTSCHLER, sworn

12 THE COURT: All right. Whenever you're ready, Mr.
13 Jackson.

14 MR. JACKSON: Thank you, Your honor.

15 **DIRECT EXAMINATION**

16 **BY MR. JACKSON:**

17 Q Sir, could you please state your name and spell
18 your last name for the record?

19 A Certainly. Dr. Andrew John Rentschler,
20 R-E-N-T-S-C-H-L-E-R.

21 Q Sir, what do you do for a living?

22 A I am a biomechanical engineer and accident
23 reconstructionist.

24 Q And what area of the country do you live in?

25 A I live in Pittsburgh, Pennsylvania.

1 Q What is your title currently at your company?

2 A I am a vice president and director of the
3 biomechanics for the Midwest division.

4 Q And what is the name of that company?

5 A It's called ARCCA, LLC.

6 Q And what is the main mission of ARCCA? What does
7 ARCCA do?

8 A So ARCCA is an engineering consulting company, and
9 we have several different types of engineers:
10 biomechanical engineers, such as myself, accident
11 reconstructionists, mechanical engineers. We look at
12 crash worthiness, safety of vehicles, and other types
13 of events. So we really do all types of work. We do
14 litigation type work, as well as research and
15 development for government and private entities as
16 well.

17 MR. JACKSON: If I may just have a moment, Your
18 Honor?

19 THE COURT: Yes.

20 Q Can you give me a brief synopsis of the
21 professional discipline of injury causation
22 biomechanics? What is that?

23 A So injury causation Biomechanics is really applying
24 traditional engineering principles to the human body.
25 So as a biomechanical engineer, I look at the response

1 of the body to accelerations and forces and determine
2 how an injury occurs. You know, an injury to the human
3 body is just an engineering problem. For instance, a
4 mechanical engineer might look at a piece of steel, and
5 you know the size of the steel and the shape of it, and
6 if you apply a force in a certain direction, that steel
7 will bend and eventually break. Well, we do the same
8 thing, but we look at the human body. How much force
9 do you have to apply, and how does that force have to
10 be applied in what direction or manner to get a
11 specific injury, whether it's a skull fracture, an
12 intervertebral disc injury, a concussion. So we look at
13 the response of the human body to different forces and
14 accelerations in different types of settings. And
15 ultimately, our hope is to help mitigate or prevent
16 injuries, whether it's in a motor vehicle accident,
17 sports setting, industrial setting, auto pedestrian
18 impact, try and make products and environments safer
19 for individuals.

20 Q And that's different from what medical doctors do,
21 correct?

22 A It is, yes, sir.

23 Q A little boy walks into an ER with a broken arm,
24 the medical Doctor wants to reset the arm and fix the
25 arm, correct?

1 A That's right, yes.

2 Q What does a biomechanical engineer want to learn
3 about the broken arm?

4 A We want to learn how that break or that fracture
5 occurs. I always say that we kind of approach injuries
6 from two different directions. You have an injury
7 occur. After it occurs moving forward, that's when the
8 medical doctors get involved. They diagnose the injury,
9 determine the best way to treat it. What's the
10 prognosis. As a biomechanical engineer, I kind of take
11 the reverse direction. We look at here's the injury,
12 here's what's diagnosed. Well, how did that injury
13 occur. You know, how much force do you have to apply
14 to cause that fracture? How did the bone have to be
15 loaded? How did it bend to actually cause this specific
16 type of fracture?

17 So we really kind of approach the injury from two
18 different directions.

19 Q Understood. And given that scientific approach,
20 oftentimes you can come to conclusions and opinions,
21 scientific conclusions and opinions about the causation
22 of an injury, correct?

23 A Absolutely. Yeah. And I mean, ultimately, that's
24 what biomechanical engineering is, how does an injury
25 occur, why did it occur, and what type of setting did

1 the injury actually occur? What type of loading and
2 what type of kinematics do you need to have this injury
3 actually occur?

4 Q Can you tell the Court a brief synopsis on the
5 discipline of human factors. What part does that play
6 in what you do for a living?

7 A Well, human factors is a large part of it as well.
8 I mean, from a biomechanical standpoint, we look at the
9 body. We have to know anatomy. We have to know the
10 makeup of the body, and then human factors plays a part
11 of it as well. It's how individuals respond or what
12 their response is to different types of environments or
13 reactions. It really all plays into looking at a
14 specific event. How did someone react? How did their
15 body move? How was the body loaded? There's all
16 different types of factors that you have to apply, the
17 human factors, kinematics, kinetics, biomechanical,
18 musculoskeletal interactions. It's all these different
19 factors that are really involved in performing an
20 analysis to ultimately look at injury causation.

21 Q Doctor, as the director of biomechanics and human
22 factors at ARCCA, what education, training, and
23 background qualifies you to perform those duties?

24 A Well, I got my bachelors of science in mechanical
25 engineering with a minor in biomedical engineering from

1 Carnegie Mellon University in 1995. I then went on to
2 get my master's in bioengineering and biomechanics from
3 the University of Pittsburgh in 2002. And then I got
4 my PhD or my doctorate in bioengineering and
5 biomechanics from the University of Pittsburgh in 2004.

6 Q Can you give us a brief work history up to and
7 before ARCCA?

8 A Sure. So I got my PhD in 2004 and then since then,
9 I've worked in the consulting field for biomechanics.
10 I've worked for a company out in Davis, California for
11 a while, called Biomechanical Engineering Accident
12 Reconstruction. I then joined another engineering
13 company in Jacksonville, Florida for about three years
14 called Chesapeake Engineering and Design. And I have
15 now been with ARCCA for approximately 16 and a half
16 years.

17 Q And in those in those positions and in your
18 position currently as a director at ARCCA, do you
19 specialize in research and analysis attendant to
20 evaluating and studying the relationships between crash
21 injuries, crash forces, human kinematics, and human
22 tolerances?

23 A I do. I mean, that's really what I do on a daily
24 basis, whether it be in litigation type cases or the
25 research and development we do for different companies

1 or entities, or even internal research that we perform
2 at ARCCA.

3 Q Doctor, what professional associations and
4 accreditations do you have?

5 A I'm a member of the American Society for Mechanical
6 Engineers as well as the Society for Automotive
7 Engineering.

8 With respect to biomechanical engineering,
9 there's no actual professor -- professional licensure
10 for biomechanical engineering. So a PhD or a doctorate
11 is the highest degree you can have in that field.

12 Q Are you also a reviewer for archives of physics
13 medicine -- or, sorry, physical medicine and
14 rehabilitation and biomechanical engineering online?

15 A I am. Yes, usually, if you publish articles in a
16 journal, usually that journal comes back to you and
17 asks you to be a reviewer. So I certainly do that type
18 of work as well.

19 Q I'd like to ask you a couple of questions about
20 your ongoing education, your professional education
21 after your PhD.

22 Have you continued your education in areas of
23 biomechanics and high impact injuries from the NTSB?

24 A I have. I've taken classes through the NTSB, NSAE,
25 the IPTM, police technology, management training

1 center, several different of entities I've taken
2 biomechanical and accident reconstruction courses
3 through.

4 Q So the alphabet soup, if you will, of biomechanical
5 engineering and human factors?

6 A Right, yes.

7 Q And you continue that today?

8 A I do, yes, sir.

9 Q Any specific training in human kinematics?

10 A Yes, I do have training in human kinematics.

11 Q Just out of curiosity, how would you define what is
12 kinematics?

13 A So kinematics is the motion of the human body, and
14 looking at how the body moves. And it's irrelevant or
15 irrespective of the forces that cause that motion. So
16 we're really looking at the -- for instance, how one
17 body part moves with respect to the next. We can see
18 how the body moves as a result of a specific type of
19 event.

20 Q You mentioned injury mechanics previously in your
21 -- in one of your answers. What is -- what is injury
22 mechanics and how does that relate to biomechanics?

23 A So again, that's a subset of biomechanics looking
24 at the response and the strength of the different parts
25 of tissue of the human body. On a very basic level to

1 get an injury or have an injury occur, you need,
2 really, two factors. You need enough force to cause
3 injury to the tissue, and you need that force applied
4 in the right manner. So if I wanted to fracture my
5 elbow, I certainly couldn't take a hit on my shoulder
6 and expect my elbow to fracture. It's force is exerted
7 in the wrong location. And likewise, if I just lean my
8 elbow on the counter here, that's not enough force. So
9 you need the force, and you need the application of
10 that force in the correct manner to produce what we
11 call an injury mechanism.

12 Q And have you ever participated in any of these
13 studies or research in this area, in addition to your
14 dissertation and getting your PhD, what about
15 additional studies and research in this general area?

16 A I have, yes.

17 Q Can you describe that for us, please, briefly?

18 A Certainly. Well, just at ARCCA, I've worked with
19 the United States military. We worked on the design of
20 the MRAP vehicles, the Mine Resistant Ambush Protected
21 vehicles over in Iraq and Afghanistan.

22 Q That's a troop carrier, correct?

23 A That's correct. Yes. And the issue there is they go
24 over the IED, the improvised explosive device, and it
25 blows the vehicle up off the ground. So you're getting

1 very large forces and accelerations through the
2 vehicle, through the seat, into the soldiers' spines.
3 So we were seeing very traumatic and severe spinal and
4 head injuries. So at ARCCA, we work on what we call an
5 energy absorbing seat design. So when the vehicle gets
6 blown off the ground, that seat is designed to absorb
7 the force and the energy to protect the soldier's spine
8 and their head.

9 Q Did you take part in the design of that seat?

10 A I did, yes, sir.

11 Q Has that been employed by the Department of
12 Defense?

13 A Yes, it has been.

14 Q And are troops utilizing that new seat design, that
15 safe seat design in that troop carrier to this day?

16 A As far as I know is from what they'll tell us, yes,
17 sir.

18 Q Understood. Are you also published in this field,
19 Doctor?

20 A I am, yes.

21 Q Can you give us a couple of examples of current
22 studies that you're involved in or publications that
23 you've done in the recent past concerning
24 bioengineering and the impact or the association that
25 it has with human factors?

1 A Sure. I mean. And another project I'm working on is
2 we work with the NHL actually at ARCCA. We have an
3 ongoing --

4 Q In what way?

5 A Well, we have an ongoing relationship with the
6 Department of Player Safety, for instance, we helped
7 redesign part of the rink. In every arena they had at
8 the end of the player area, there was a basically a 90
9 degree stanchion where the glass met, and so players
10 were kind of getting checked down in the boards and
11 then hitting up against the glass. And actually,
12 somewhat ironically, it was Chara hitting Pacioretty
13 into the glass in the Boston/Montreal game and caused a
14 cervical fracture and concussion. And the NHL came to
15 us to see if we could have a redesign of the rink to
16 make it a little safer. So we took crash test dummies,
17 anthropomorphic test device, which you've probably seen
18 on TV. The automotive manufacturers use them all the
19 time. And threw them into different configurations of
20 glass, and now in every arena in the NHL, it is a
21 basically a curved piece of spring loaded Lexan or
22 plexiglass where the players now -- they hit into it,
23 it absorbs the impact, and they glance off of the
24 glass.

25 Q Is that a design that you helped come up with?

1 A It is, yes.

2 Q So both from the United States military as well as
3 professional sporting leagues, they've come to you to
4 help save lives, lower risk?

5 A That's right. Mitigate and prevent injuries, yes.

6 Q What about crash and sled testing?

7 A Yeah, I've performed a number of crash and sled
8 tests. When you look at, you know, any vehicle that's
9 driven in the United States, it has to pass Federal
10 Motor Vehicle Safety Standards. There's federal
11 regulations that they have to pass, and, you know, part
12 of that involves running the vehicle into a wall at 35
13 miles an hour, hitting it from behind, roll over-type
14 impacts. And they have these crash test dummies in
15 those vehicles. So we perform a lot of testing for
16 different cases and situations where we put that dummy
17 in the vehicle, and we evaluate the safety system,
18 whether it's the lap and shoulder belt, or if it's the
19 airbag or the seat belt pretensioner to determine how
20 to make the car safer. And part of that is looking at
21 the force that's exerted on that dummy because there's
22 tolerance values. We know how much force it takes to
23 cause specific injuries. So we want to make sure, in
24 certain instances, at certain speeds or impacts, that
25 if someone's in an accident, the force acting on, say,

1 their head or their neck or their chest, is going to be
2 below these established tolerance values.

3 Q Speaking of how much force it takes to cause an
4 injury to a human body, have you engaged in any testing
5 or published in the field of auto pedestrian incidents?

6 A Yes. I've been involved in a number of studies
7 where we're looking at auto pedestrian type impacts.
8 Again, we -- a lot of times we'll utilize the crash
9 test dummy, where we'll set it up and we'll actually
10 have it struck by different vehicles or different
11 objects, to look at the response of the body. It's
12 very important, if you're talking about an auto-ped
13 type impact, you have to know the configuration of the
14 pedestrian, the vehicle, where they hit on the vehicle,
15 whether it's a projection-type impact, a wrap, a fender
16 vault. It really all depends on how the person's
17 positioned, and the amount of force and speed involved
18 in that type of an impact.

19 Q And staying with that for a second, that basic
20 subject matter, have you also engaged in studies
21 related to slips and falls where somebody might fall
22 from a standing position and injure themselves, either
23 to their head, shoulders, whatever, and those kinds of
24 injury impacts?

25 A I have, yes. And I mean, one of the issues we look

1 at there is a lot of people fall, you know, especially
2 elderly people. So we want to look at what types of
3 forces are being produced. You look at hip fractures,
4 if you slip and fall backwards, head fractures. So
5 we're trying to determine how to prevent those falls
6 from happening, and also create devices or products
7 that can help actually prevent injuries if someone does
8 take a fall.

9 Q Doctor, have you been detained as an expert in the
10 area of biomechanical engineering and human factors in
11 the past?

12 A I have, yes, sir.

13 MR. JACKSON: May I approach, Your Honor?

14 THE COURT: Yes.

15 Q Can you take a look at that document and tell me if
16 you recognize it?

17 A This is a list of my deposition and trial
18 testimony.

19 MR. JACKSON: Your Honor, I provided that to the
20 Court this morning.

21 THE COURT: Yes, I appreciate it. I had a chance to
22 look at it.

23 Q Okay, that's about. I don't want to go through
24 everything. That's about a 14-page document; is that
25 correct?

1 A That's correct, yes.

2 Q Let me just ask it this way. How many times do you
3 think you've been qualified as an expert in the field
4 or testified as an expert in the field of biomechanics,
5 biomechanical engineering, and human factors?

6 A I've testified probably over 150 times in numerous
7 state, federal, civil, and criminal courts throughout
8 the country.

9 MR. JACKSON: Your Honor, move to -- I'm sorry.
10 May I approach?

11 THE COURT: Yes.

12 MR. JACKSON: For purposes of voir dire, Your
13 Honor, I would ask that this document be marked.

14 THE COURT: Sure.

15 (Whereupon Voir Dire Exhibit No. 5, List, was marked as
16 an exhibit.)

17 MR. JACKSON: Thank you.

18 Q Have you ever testified in criminal court as an
19 expert in biochemical engineering?

20 A I have, yes.

21 Q How recently have you testified in criminal court?

22 A Well, actually, I've just recently I've testified
23 twice. The end of May, I think May 31, I testified in
24 McKean County, Pennsylvania for the prosecution. It was
25 a case where the defendant was accused of beating his

1 girlfriend to death, and basically said that she fell
2 down the steps. So my testimony involved determining
3 how her injuries occurred, and that they were entirely
4 inconsistent with what would have happened during a
5 stair fall.

6 Q What about another case?

7 A And then about a week after that, around June 6, or
8 7, I testified in Cambria County, Pennsylvania, again
9 for the prosecution for another homicide case where the
10 defendant was accused of essentially beating his wife
11 to death and then said that she actually fell backwards
12 and struck her head and caused a skull fracture on the
13 side of the sink. So my testimony, again, pertained to
14 looking at the injury mechanisms and determining that
15 his story of her falling back and striking her head on
16 the sink, it's inconsistent with the injuries and the
17 type of force that would have been exerted in that
18 case.

19 Q In both of those murder cases, you were hired or
20 retained by the prosecution in the case, not by the
21 defense, correct?

22 A That's correct,

23 Q And you gave your opinions in furtherance of the
24 prosecution's case in chief, not the defense case in
25 chief, correct?

1 A That's correct, yes.

2 Q With regard to this case, you were asked to look at
3 several items. We've already gone over those in other
4 testimony, so I won't belabor that.

5 You were asked to look at several items, correct?

6 A I was, yes.

7 Q Ultimately, based on that series of information,
8 that universe of information that you were provided,
9 see if you could come to an opinion and conclusion
10 concerning the incident before the Court now, correct?

11 A That's right. Determine -- see if I could
12 determine what happened, how the injuries occurred, and
13 the events leading up to and during that process.

14 Q Without going into your conclusions and opinions,
15 were you able to come to conclusions and opinions to a
16 reasonable degree of scientific certainty?

17 A I was, yes.

18 Q You were not hired by the defense, by me or anybody
19 on the defense side, in this case, correct?

20 A That's correct. I was not.

21 Q You were not consulted with or hired by the
22 Commonwealth, either?

23 A I was -- that's correct. I was not.

24 Q It was a completely independent agency; is that
25 right?

1 A That is correct, yes, sir.

2 Q Before this morning, have you and I ever met?

3 A No, sir.

4 Q And we've never talked about -- you and I have
5 never talked about the substance of your opinion and
6 conclusion, correct?

7 A We have not. That's correct.

8 Q You did reduce those opinions and conclusions in
9 conjunction with your team to a report; is that right?

10 A I did, yes.

11 Q And your understanding is that report was made
12 available both to the defense and the Commonwealth in
13 this case; is that right?

14 A Yes, sir, that's correct.

15 MR. JACKSON: I have nothing further, Your Honor.

16 THE COURT: Okay. Mr. Lally.

17 MR. LALLY: Thank you.

18 **CROSS-EXAMINATION**

19 **BY MR. LALLY:**

20 Q Just a few questions for you, sir. Good afternoon.

21 A Good afternoon, sir.

22 Q Now, with relation to your work in this instance in
23 this case, were there any limitations as far as
24 confidentiality or anything that were put on you or any
25 of your team?

1 A What do you mean by confidentiality?

2 Q As far as who, what, where, and how you could
3 discuss what you did?

4 A Well, yeah. I mean, certainly we just discussed
5 with who we were retained by in this case. I don't
6 believe I discussed the case with anybody else except
7 for my cohorts who were also involved in the case.

8 Q And so my question, sir, more is geared towards at
9 some point you were made aware that your report, your
10 findings, were made available to both the prosecution
11 and the defense in this case, correct?

12 A I was made aware of that, yes, sir.

13 Q And when you were made aware of that, was there any
14 limitations on given to you as far as who you could
15 discuss your report, your findings, or anything with?

16 A Yeah, basically given the direction or the request
17 that I don't actually discuss the substance of my
18 opinions or my report with anybody, aside from who we
19 were originally retained to work for.

20 Q Now --

21 MR. LALLY: May I approach, Your Honor?

22 THE COURT: Yes.

23 Q Sir, I am going to show you the first couple pages
24 of your report. Specifically, right down the bottom.
25 There's a list items, one through fourteen, I'd ask you

1 to review those and look up when you're finished.

2 A (Witness complies.) Okay.

3 Q Now, is that the totality of information that you
4 and your firm were provided with in reference to what
5 you did in this case?

6 A I believe it was, yes, sir.

7 Q So nothing beyond that list of 14 things did you
8 have occasion to look at, review, or have any
9 opportunity to see at any time?

10 A Well, aside from we did do testing in this case, so
11 we did do other work.

12 Q Aside from your independent testing, I'm asking as
13 far as material provided by whoever employed you, that
14 is a sum and total of what you received, correct?

15 A I believe that would be correct, yes, sir.

16 Q And did you personally review each of those 14
17 items because -- and I don't fault you or your company
18 for this, but within your report, there's a lot of
19 "we". So what I'm asking is, did you personally review
20 each of those 14 items that are listed in that report?

21 A I did personally review every, every bit and every
22 page of information that was provided in this case,
23 yes, sir.

24 Q And to be clear, just to sort of close the loop on
25 this, when it comes to those 14 items, were you allowed

1 to ask for any additional items, or was it just you
2 were limited to, this is what you have. Go form an
3 opinion.

4 A There may have been discussion about if there's
5 other information available, but I believe ultimately,
6 that we rendered our opinions, obviously, just on this
7 specific information that was provided to us.

8 Q Now, as far as your opinion in your report, when
9 was that issued?

10 A February 12th of 2024.

11 Q So that date on the top of the report, the report
12 of February 12, 2024, that's when you sent the report
13 to the people that contracted you to do the analysis in
14 the first place?

15 A That's correct, yes, sir.

16 MR. JACKSON: May I approach, Your Honor?

17 THE COURT: Yes.

18 Q Now, am I correct, and what I'm trying to ascertain
19 here, Doctor, is just sort of the different roles that
20 you and the other members of your team performed in
21 reference to this.

22 Am I correct in that your primary role in this
23 pertain to the sort of biomechanical engineering
24 analysis of the injuries sustained by Mr. O'Keefe?

25 A That would be correct, yes, sir.

1 Q And not to put too fine a point on it, but Dr.
2 Wolfe would have been more responsible for issues
3 related to the vehicle itself?

4 A Generally speaking, yes, that would be correct.

5 Q Obviously, there's some interaction between damage
6 to the vehicle and injuries to Mr. O'Keefe, but as far
7 as your primary sort of any opinions contained within
8 this report pertaining to injuries to Mr. O'Keefe,
9 those would be your opinions, correct?

10 A Yes, any, any opinions or information with respect
11 to the injuries would be my purview and my opinions in
12 this matter. Yes, sir.

13 Q And you can comment on the -- so the any opinions
14 related to damage to the motor vehicle, those would be
15 opinion of Dr. Wolfe; is that right?

16 A Well, to some extent. I mean, certainly I would
17 have opinions as well based on the interaction, or
18 alleged interaction between the body and, for instance,
19 the vehicle, in this case, and what damage to both the
20 body as well as the vehicle you would expect. So I
21 think there's basically some overlap between those
22 issues. I wouldn't say that it's a complete separation.

23 Q And so and again, Doctor, what your opinions or
24 ultimate conclusions are, whether they be yours or Dr.
25 Wolfe's or a combination of the two, it's all limited

1 based on the information and the evidence that you
2 received, correct?

3 A It certainly is based on the information that we
4 reviewed and listed in our report, yes, sir.

5 Q Now, as far as sort of a mandate or -- from the
6 agency that hired you, were you asked to answer a
7 specific question, or were you asked to just do an
8 analysis based on what we sent you, or how was that put
9 to you as far as what you were -- what you were doing?

10 A There were -- there was a specific request that we
11 were asked to perform and to evaluate in this case.

12 Q And specifically what I'm asking, sir, is there's
13 an analysis in there of whether or not the injuries to
14 the back of Mr. O'Keefe's head could have been caused
15 from contact with the vehicle, correct?

16 A That is part of my analysis and opinions, yes, sir.

17 Q And were you specifically asked to address or
18 answer that question by the agency that hired you?

19 A That was one of the questions I was specifically
20 asked, yes, sir.

21 MR. LALLY: I have nothing further.

22 THE COURT: Anything further, Mr. Jackson?

23 MR. JACKSON: Submitted, Your Honor. Thank you.

24 THE COURT: All right, so, Doctor, I have a couple
25 of questions for you, sir.

1 So regarding the specific request, what were you
2 tasked to do, specifically?

3 THE WITNESS: So specifically, overall, I was
4 tasked from the biomechanical standpoint to determine,
5 or see if it's possible to determine how the injuries
6 in this case occurred, and part of that was to
7 determine whether the injuries, the head injury and the
8 arm injuries resulting from contact with the Lexus in
9 this case.

10 THE COURT: Okay. And regarding all of your prior
11 testimony, a good deal of it seems to be in
12 depositions. Any of those in Massachusetts?

13 THE WITNESS: There's a couple, I believe. I've
14 testified at trial in Massachusetts, Middlesex Superior
15 Court.

16 THE COURT: Do you know where that might be? Do you
17 want to look at that?

18 THE WITNESS: I can find it for you. Maybe a couple
19 of months ago.

20 THE COURT: Was it in a criminal case or a civil
21 case?

22 THE WITNESS: Oh, it was in a civil case. I think,
23 let's see here. I think, yes, so let's see. There was
24 one November 14, 15, 2023, Middlesex Superior Court.
25 That was probably the most recent one.

1 THE COURT: What number is that on there so I can
2 look at it.

3 THE WITNESS: That is number 310.

4 THE COURT: Thank you. Is there another
5 Massachusetts case?

6 THE WITNESS: Oh, I'm sure there are. Because I
7 know there's some from earlier in my career. Let's see,
8 see if I can find Before you real quickly here.

9 Connecticut, Louisiana, and oh, there's 68. I'm
10 going -- I'm going butcher it. Worcester, Worcester.

11 THE COURT: Worcester.

12 THE WITNESS: Worcester.

13 THE COURT: Is that a civil or criminal case,
14 Doctor?

15 THE WITNESS: That is a civil case as well.

16 THE COURT: Okay. What year was that?

17 THE WITNESS: Oh, that one was 2012.

18 THE COURT: Okay. Any others that you think of or
19 you see?

20 THE WITNESS: There may have been a couple others.
21 I don't recall off the top.

22 THE COURT: All right. I'll go through it more
23 closely. I appreciate you saving me some time.

24 THE WITNESS: Absolutely.

25 THE COURT: All right. Any questions based on my

1 questions?

2 MR. LALLY: No, thank you.

3 MR. JACKSON: No.

4 THE COURT: All right. You are all set, sir. Thank
5 you very much.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: All right, so, Mr. Lally, I will hear
8 you on your motion.

9 Now, we didn't get into the ultimate opinions and
10 the basis for that opinion, but I'll hear you on your
11 motion.

12 MR. LALLY: Your Honor, what, essentially, what the
13 Commonwealth was seeking and had been seeking was just
14 in reference to that, as far as who did what, and who
15 was responsible for what, and what were the items
16 reviewed, and is that the totality of it. There's a
17 date on the report. I don't know if that was the date
18 as far as when it was filed, when it was the opinion
19 was rendered, when that was provided, what was provided
20 to them in the course of their analysis. So I think
21 very simply, what the Commonwealth had been seeking for
22 the most part was covered today.

23 THE COURT: Okay. All right. I have some
24 questions as to the scope of the testimony of the
25 witnesses.

1 So, Mr. Jackson, you intend to have them testify
2 consistently with the report, everything covered in the
3 report?

4 MR. JACKSON: Correct.

5 THE COURT: And the conclusions, all four
6 conclusions in the report?

7 MR. JACKSON: Correct.

8 THE COURT: Mr. Lally, what's your -- what's your
9 take on this?

10 MR. LALLY: I do have an issue with number four. I
11 don't -- I don't think they're qualified to testify to
12 -- I don't think either of them is qualified to testify
13 to that. That's more of an area of forensic pathology.

14 THE COURT: What do you say to that, Mr. Jackson?

15 MR. JACKSON: Number four is their opinion is there
16 is currently insufficient evidence to determine the
17 cause of Mr. O'Keefe's skull brain injuries or the
18 circumstances surrounding the event. That is well
19 within the scope of their expertise, obviously. I
20 don't think I have to beat this dead horse. They are
21 highly, highly qualified to render all four opinions.
22 And if the evidence in their opinion, their expert
23 opinion to a legal degree of science certainty, which
24 is what's evidenced here by the Court, is that there is
25 insufficient evidence to determine the cause of Mr.

1 O'Keefe's injuries, then that is an opinion that they
2 are well within their -- it's well within the scope of
3 what they can testify to. That's their opinion. That's
4 their conclusion. Mr. Lally is going to have an expert,
5 Trooper Paul, who is going to differ or who has
6 differed in that opinion, so be it.

7 THE COURT: And I would have kept it out. Remember,
8 I would have kept out any medical part had there been
9 an objection. When you objected, I sustained the
10 objection.

11 MR. JACKSON: No, no, no. I think we're talking
12 about two different things - apples and oranges. I
13 didn't -- that's not -- Trooper Paul's opinion is that
14 his injury or his injuries were I think he said
15 variously that it was blunt force -- it could have come
16 from the curb or it was blunt force because the road
17 was blunt. That was his opinion, and he was sticking
18 to it. This is contrary to that. Both of these
19 individuals have come to the conclusion and opinion,
20 that the evidence is insufficient to support that
21 determination, and it's well within their purview to
22 testify to that.

23 MR. LALLY: Your Honor, if I may, I don't think
24 that's their actual opinion. I initially didn't think
25 of it in these terms as it's phrased on the cover page

1 of the report. If you look at the actual opinion and
2 the findings --

3 THE COURT: I was looking at the last page. Are
4 they the same on the front and the back?

5 MR. LALLY: It's -- I think the front is a little
6 more definitive and concerning. The back, I think more
7 as to it's consistent with a whole multitude of
8 different things. So the fact that they -- I don't
9 really think that's an opinion at all to be honest with
10 you.

11 THE COURT: All right. I'll take a look at this
12 more closely and give you a decision on Thursday. All
13 right. I did not expect it to go this quickly. We
14 could have had the jury here, but I'm sure you all
15 could use the afternoon to prepare.

16 All right, Mr. Lally, let me know Thursday, if you
17 need -- are you ready to go forward at least with your
18 case on Thursday?

19 MR. LALLY: Oh, yes, Your Honor.

20 THE COURT: Let me know Thursday if you need
21 additional time. If I let these witnesses -- if I let
22 Dr. Russell testify, how that impacts our schedule.
23 Okay. But I don't want that to be a concern of yours
24 how it impacts the schedule. That's my concern. I just
25 need to know.

1 All right. So anything else?

2 MR. LALLY: Not for the Commonwealth.

3 MR. JACKSON: I think that's it. Thank you, Your
4 Honor.

5 THE COURT: Okay. We'll see You Thursday morning.

6 (Court in recess.)

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C E R T I F I C A T I O N

I, CHRISTINE D. BLANKENSHIP, NOTARY PUBLIC, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT
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I AM NOT FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF
THIS ACTION.

Christine D. Blankenship, October 30, 2024

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